IN THE

Supreme Court of The United States

October Term, 1919.

No. ~~375.~~ 186

LOWER VEIN COAL COMPANY,
Appellant,

vs.

INDUSTRIAL BOARD OF INDIANA, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF AND ARGUMENT FOR APPELLANT.

Together with an Appendix Containing for Convenience the Workmen's Compensation Law of Indiana and a Synopsis of Certain Decisions, with Respect to the Workmen's Compensation Laws of Various States.

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SUBJECT INDEX.

ALPHABETICAL INDEX OF SUBJECTS.

ALPHABETICAL LIST OF CASES REFERRED TO.

IN THE

Supreme Court of The United States

October Term, 1919.

LOWER VEIN COAL COMPANY,
Appellant,
vs.
INDUSTRIAL BOARD OF INDIANA,
Appellee.

No. 573.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES.

STATEMENT OF THE CASE.

QUESTION INVOLVED.

Under Section 18 of the Workmen's Compensation Act of Indiana, as amended in 1919 (Acts 1919, at page 160), all coal mining companies, including appellant, are required to operate under the provisions of the Workmen's Compensation Act, which is made mandatory as to them, and as to the State and its political subdivisions and municipal corporations. As to all other employers the Act remains a permissive one, and they may elect to operate under its provisions, except that railroad employees engaged in train service do not come within the provisions of the law.

The sole question presented by this appeal is the validity of said Section 18, as amended. Appellant's grounds of attack are as follows:

(1) That it (Section 18, as amended) violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

(2) That it violates the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That it violates Section 23 of the Indiana Bill of Rights, reading as follows:

> "The General Assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same erms, shall not equally belong to all citizens."
>
> Section 68, Burns' R. S. 1914.

(4) That it violates Section 21 of the Indiana Bill of Rights, reading as follows:

> "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered."
>
> Section 66, Burns' R. S. 1914.

The question to be considered is whether the Indiana General Assembly may pass a general compensation law, applicable to all employers within the State, and make it compulsory as to one hazardous employment, and elective as to all others (many equally hazardous) except railroad employees in train service to which it does not apply at all.

We insist that such a classification rests upon no sound or just basis, and is violative of the Constitution of the United States and of the constitution of the State of Indiana in the several particulars above indicated.

STATEMENT OF FACTS.

COMPLAINT.

The facts alleged in the bill of complaint are as follows:

Appellant is a corporation organized under the laws of Indiana, and engaged in mining and marketing coal, employing five hundred men in its business in the State of Indiana; that all the contracts for hiring its employees are made within the State of Indiana. (Transcript, page 2.)

That defendant Industrial Board of Indiana is a board created by the Workmen's Compensation Law of 1915, and the individual defendants are members of said Board. (Transcript, page 2.)

That the General Assembly of 1915 enacted a Workmen's Compensation Law, which was amended in 1917; the bill then sets out the amendments to the law, made in 1919. (Transcript, pages 3 to 16.)

That the Act of 1915, as amended in 1917, was a permissive act; that plaintiff elected to reject the law in 1915, which written rejection is set out. (Transcript, pages 16-18.)

That said election has never been withdrawn. (Transcript, page 19.)

That on April 9, 1919, plaintiff served on defendant Industrial Board of Indiana a notice in writing that it refused to comply with the amendments made to the Work-

men's Compensation Law by the General Assembly of 1919, because such amendments were unconstitutional and void and deprived plaintiff of its property without due process of law and denied it the equal protection of the law, in violation of the provisions of the Constitution of the United States and of the State of Indiana. (Transcript, page 19.)

That the defendants claim that said amendatory act of 1919 is a valid law and compels all coal mining companies, including plaintiff, to operate under said compensation law; that it is the intention of the defendants to assume jurisdiction and to hear complaints and render awards and that it will, unless enjoined by the court, take jurisdiction of claims for compensation made by employees of coal mining companies, including plaintiff, and will proceed to enforce said law. (Transcript, pages 19 and 20.)

That in plaintiff's business in Indiana there have occurred from time to time in the past, and will in the future occur, accidents to plaintiff's employes resulting, without any negligence on plaintiff's part, in injuries to plaintiff's employees in the line of their duties and in the course of their employments; that claims for compensation for such injuries will be filed by such injured employees or their dependents with the Industrial Board of Indiana, and compensation will be awarded in practically all of said cases; on information and belief plaintiff alleges that during the remainder of the year 1919, there will be more than twenty-five such accidents for which compensation will be claimed; that the compensation made will exceed $25,000; that plaintiff will be compelled to defend these claims and to expend in attorneys' fees and expenses $5,000 during the remainder of 1919. (Transcript, pages 20 and 21.)

That under and by virtue of the terms and provisions of Section 18 of the Workmen's Compensation Act as amended in 1919, said Act is now mandatory and compulsory, if said law be valid, upon the State of Indiana, its political subdivisions and all municipal corporations, and upon persons, partnerships and corporations engaged in mining coal and the employees thereof, and is optional and permissive as to all other employers and employees within the State of Indiana; that persons, partnerships and corporations engaged in the coal mining business are the sole and only private employers and corporations who are compelled to operate under said Workmen's Compensation Act. (Transcript, page 21.)

That the business of mining coal is a hazardous one, but there are many other businesses conducted in the State of Indiana in which thousands of men are employed, which are more hazardous than the business of mining coal, and many other businesses in which thousands of men are employed annually in the State, which are equally as hazardous as the business of mining coal. (Transcript, page 21.)

The bill then sets out the number of injuries for the year ending October 1, 1917, and the year ending October 1, 1918, to employees of steam railroads, iron and steel industries, manufacturing and machine shops, auto manufacturing and repairing, coal mining, general contractors, furniture manufacturing, car manufacturing and repairing, foundries and glass manufactories, showing that in each of such years in the number of accidental injuries the coal mining business was fifth. (Transcript, page 21.)

That Section 18 of the Workmen's Compensation Act of Indiana, as amended by the General Assembly of Indiana for the year 1919, is unconstitutional and void, and that it

violates the provisions of the Fourteenth Amendment and deprives plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the law, in the following particulars:

(a) That the classification attempted in said Act is arbitrary and discriminatory, and is not based upon any just or reasonable ground, but that the General Assembly has passed a law arbitrarily and without any fair reason, making the Workmen's Compensation Act compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal and permissive, or voluntary, as to all other businesses within the State of Indiana.

(b) It denies the plaintiff the equal protection of the laws, because it is not equal or uniform in its operation, but singles out the line of business in which the plaintiff is engaged, the same being a lawful business, and imposes onerous burdens upon such business, and upon the plaintiff, and upon others engaged in the same business as the plaintiff, without imposing like burdens upon others engaged in similar business within the State of Indiana, and upon others whose businesses are equally hazardous, and more hazardous than the business of the plaintiff.

(c) That said Act deprives the plaintiff of its property without due process of law, in that it imposes burdens upon the plaintiff, not imposed upon other persons, partnerships and corporations similarly situated and engaged in business of equal, or greater hazard.

(d) That said Act, in its provisions, is partial, unreasonable, oppressive and unequal.

(e) That the classification fixed by said law rests upon no sound or reasonable basis, but is wholly arbitrary. (Transcript, page 22.)

That said Act is invalid because it violates Section 23 of Article I of the Bill of Rights of the Constitution of Indiana for the following reasons:

(a) Because the said Act grants to other citizens, and classes of citizens, the privileges and immunity of not coming under the provisions of said law, which it does not grant upon the same terms and equally to the plaintiff and others engaged in the business of mining coal within the State of Indiana.

(b) Said Act is discriminatory against the plaintiff, and all other persons, partnerships and corporations engaged in the business of mining coal, which is a lawful business, and in favor of other equally hazardous and dangerous businesses.

(c) There is no basis for the classification fixed by said Act, and said classification is unjust, oppressive and discriminatory. (Transcript, page 23.)

That said Act is invalid because it violates Section 21 of Article I of the Bill of Rights of the Constitution of Indiana for the following reasons:

(a) Because plaintiff's property would be taken by awards made by the Industrial Board of Indiana, where there was no negligence, or fault upon the part of the plaintiff; and other persons, firms and corporations engaged in business equally, or more hazardous, would not be subjected to the same liability.

(b) Because the private property of this plaintiff would be taken by virtue of the awards of the Industrial Board of Indiana, as heretofore averred, without any negligence on the part of this plaintiff, and in disregard of the question as to whether or not this plaintiff was negligent, for the

alleged public purpose of protecting the State of Indiana, and without compensation to the plaintiff.

The prayer of the bill is for an injunction, after notice, restraining the Industrial Board of Indiana from hearing any claims for compensation or making any awards, and that upon final hearing said Section 18 as amended be declared invalid and void, as violative of the State and Federal Constitutions, and that a perpetual injunction be issued, restraining the defendants and their successors in office from enforcing in any manner the provisions of said act as amended. (Transcript, page 24.)

The Workmen's Compensation Act of 1915, as amended in 1917, is set out. (Transcript, pages 25 to 42.)

Amendment to Bill of Complaint.

By amendment to its bill, plaintiff alleged that the various corporations, co-partnerships and individuals engaged in the coal mining business have hundreds of employees who are employed above the ground, in clerical work, hauling, carpentering and similar occupations; that plaintiff has many such employees who are not coal miners and do not dig coal, and that all of said employees are covered by the provisions of said Section 18, and, if said section is valid, are entitled to compensation without regard to plaintiff's negligence for any injuries sustained by them. (Transcript,, page 44.)

That practically without exception all persons engaged as employees in the actual mining of coal in Indiana are members of the United Mine Workers of America, which is a labor union organized and maintained for the protection of its members; that said United Mine workers' Union em-

ploys in Indiana attorneys, whom it pays by the year, to attend to the interests of its members, which attorneys are employed to and do prosecute without expense to injured employees or their dependents, all suits for personal injuries brought by said members in the State of Indiana, and that, whereas in other occupations industrial workers have large sums of money to pay frequently on a contingent basis to lawyers representing them in their suits for personal injuries, injured coal miners and their dependents receive, without abatement or payment of attorneys' fees, all damages recovered by them for personal injuries; that persons actually employed in Indiana in the coal mining business are paid for their services a higher rate of wages or compensation than any other industrial workers in Indiana; that many of them do carry policies of insurance protecting themselves and their families against injuries resulting in accident and death. (Transcript, pages 44 and 45.)

That said Act is invalid because it includes within its terms all employees of coal mining companies, whether engaged in the hazardous part of the coal mining business or not, and is mandatory as to all such employees and as to the employers of all such employees, whereas, as to employees of other private business corporations, it is not mandatory as to those engaged in the non-hazardous part of the business but is permissive only, and excludes from its operation railroad employees engaged in train service. (Transcript, page 45.)

Defendant's Answer.

Defendant's answer alleges that the Workmen's Compensation Act of Indiana of 1915, as amended in 1917, was not a permissive act but was compulsory as to the tSate of

Indiana, its political subdivisions and municipalities, and expressly exempted therefrom casual laborers, farm agricultural laborers, and domestic servants, unless such last named employees and their employers voluntarily elected to be bound by said Act. (Transcript, page 46.)

That the Industrial Board of Indiana claims that the amendatory Act of 1919 is valid and effective, and asserts that the compulsory features of said Section 18 are valid, and admits that it is their intention to assume jurisdiction of claims for compensation asserted thereunder. (Transcript, pages 46 and 47).

That the Indiana Legislature based the classification made in Section 18 partially upon the fact that many accidents had theretofore occurred in the operation of coal mines in Indiana, including the mines of plaintiff, which accidents resulted in the death of and injury to employees in the course and arising out of their employment, and that in many of such cases such employees had no redress at law and that in such cases where employees were afforded redress at law, such redress was found by said General Assembly to be inadequate, expensive and accompanied by vexatious delays, and that the occupation of mining coal had been extremely hazardous and will continue so to be, and that said occupation of coal mining theretofore contained, and will continue to contain, inherent hazards and dangers not encountered or contained in any other occupation, business or industry carried on in Indiana. (Transcript, page 47.)

That the business of mining coal is more hazardous than any other business, occupation or industry carried on and conducted in Indiana, in this, that in proportion to the men employed in the business of mining coal the percentage of

casualties is greater than in any other business; that the percentage of fatalities occurring in the operation of coal mines is greater than in any other business; that the nature and extent of injuries received by employees in such business are more severe, serious and aggravated than those received by employees in other businesses; that the hazards and dangers inherent in the operation of coal mines are more numerous, diverse and varied than any other occupation in Indiana. (Transcript, page 47.)

That the number of employees employed above ground in operating coal mines is small and will not exceed on an average of ten per cent. of the total employees; that in the year 1918 more than one hundred casualties occurred among employees working above ground, ten of which were fatalities; that the duties of a large per cent of employees working above ground are dangerous and hazardous. (Transcript, page 48.)

That all persons engaged as employees in mining coal, except company men, are members of the United Mine Workers of America; that said union employs attorneys at an annual salary, to handle and prosecute personal injury claims, all from funds voluntarily paid by said employees; that practically all of the owners and operators of coal mines in Indiana were and are organized into an association known as the "Indiana Coal Operators' Association"; that such association now employs and for many years has employed attorneys to look after the interests of the operators, including matters of legislation, and that such association employed attorneys to test the validity of said Workmen's Compensation Act as amended in 1919; that ninety-two persons, firms and corporations engaged in the operation of a majority of the coal mines in Indiana, are members of an-

other reciprocal insurance organization, which employs managers and agents for the purpose of defending suits and securing releases from liability for personal injury claims; that plaintiff is a member of said organization; that the members of said organization have rejected the provisions of the Workmen's Compensation Law of 1915 as amended in 1917, and, if Section 18 as amended in 1919 is declared void, that the members of said Association will reject the provisions of the Workmen's Compensation Law and that their employee will be subjected to the delays, expenses and inadequate settlements necessarily incident to the assertion of their claims under the liability laws of Indiana; that many of them will not be able to establish their claims and they will be without remedy or redress and will become objects of charity. (Transcript, pages 48 and 49.)

That the allegation in plaintiff's amended bill that persons employed in Indiana in mining coal were paid a higher rate of wages than any other industrial workers in Indiana is based upon statistics for the period of world war, during which time the coal mines of Indiana operated full time and full capacity, which resulted in an abnormal increase in wages, but that both prior and subsequent thereto the earnings of miners were materially less than during said war period and materially less than many industrial workers. (Transcript, page 49.)

That the General Assembly of Indiana had the power under the Fourteenth Amendment to make the classification as specified in Section 18 as amended, in the exercise of its police power; that said classification is founded upon a reasonable basis and does not offend as against the equal protection clause of the Fourteenth Amendment; that said classification should be sustained. (Transcript, page 49.)

The answer then sets out (pages 50 and 51 of the Transcript) how coal mines are operated and the dangers incident to their operation, alleging, among other things, that men are injured, wounded and killed in the operation of coal mines on railroad cars, screens, shakers, engine rooms, boiler rooms, pulleys, belts, dynamos, wash houses, scales, blacksmith shops, tipples, cages, bottoms of shafts, entries, cross entries, track-ways, haulage-ways, switches, frogs, uninsulated machine wires, uninsulated trolley wires, trimming flats, motor trips, motor cars, coal cars, mules, mule trips, mining machines, cutter bars, falls from roofs, falls from loose coal, electrocution, falling down shafts, black damp, white damp, falling timbers, rubbing ribs of coal, marsh gas, dust explosions, windy shots, shots, powder explosions, coupling cars, falling from tail chains, and in many other ways, both accidentally and through negligence, all of which happened prior to 1919 and will continue to happen; that owing to the peculiar nature of the method of coal mining in Indiana, said business was and will continue to be more hazardous and the accidents therein have and will continue to occur in more varied ways than in any other business and that practically all other businesses and industries in Indiana except operators of coal mines were accepting the provisions of the Workmen's Compensation Law and were paying compensations for injuries, and that the coal mining industry was the only industry in Indiana refusing to avail itself of the provisions of the Workmen's Compensation Law; that the only other business not operating under the provisions of said Act were railroads, which at the time were under a Federal Compensation Law. (Transcript, page 51.)

That Section 18 as amended does not violate either of the provisions of the Indiana Constitution relied upon by plaintiff, because the classification fixed by said Act is just and reasonable and founded upon conditions and facts justifying the classification. (Transcript, pages 51 and 52.)

The evidence applicable to the several questions involved is discussed in detail in appellant's "Brief of Argument."

SPECIFICATION OF ERRORS RELIED UPON.

The Court below erred:

First. In not decreeing Section 18 of the Workmen's Compensation Law as amended to be unconstitutional and void in that the classification attempted in said amendatory act is arbitrary and discriminatory and not based upon any just or reasonable grounds, and in that the General Assembly of the State of Indiana passed said law arbitrarily and without any fair reason, making the same compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal, including plaintiff, and voluntary and permissive as to all other businesses except railroad employees engaged in train service, domestic employees and agricultural servants, to which the act does not apply.

Second. In not decreeing that said Section 18 as amended deprives plaintiff of its property without due process of law, and denies to the plaintiff the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, because said law is not equal and uniform, but selects the coal mining business and imposes upon it onerous burdens without imposing like bur-

dens upon persons engaged in similar and equally hazardous business.

Third. That said Section 18 as amended is unconstitutional and void because it is an unwarranted abridgment of rights and privileges guaranteed to plaintiff by the Fourteenth Amendment to the Constitution of the United States, in that it is arbitrarily and unjustly discriminatory, is partial, unreasonable, oppressive and unequal.

Fourth. In dismissing the plaintiff's bill of complaint.

Fifth. In not decreeing that said Section 18 as amended granted to citizens and classes of citizens privileges and immunities which, upon the same terms, did not equally belong to all citizens, in violation of Section 23 of Article I of the Constitution of Indiana, in that the classification made in said Act as to coal mining companies is arbitrary and unjust.

Sixth. In not decreeing said Section 18 as amended to be violative of Section 21 of Article I of the Indiana Constitution, providing that no man's property shall be taken by law without just compensation, because the private property of plaintiff would be taken by awards of the industrial board without reference to the question of negligence, for the public purpose of protecting the State of Indiana, and without compensation to plaintiff.

BRIEF OF ARGUMENT.

POINTS AND AUTHORITIES.

A. Plaintiff at the outset of this controversy, so that there may be no misapprehension as to its position, states the following propositions:

1. The mining of coal is a hazardous occupation. The General Assembly of Indiana has the right and power to pass reasonable laws looking toward the safety of the employees therein.

Such laws, when enacted, are not open to the objection that they violate either the State or the Federal Constitution; provided that if a classification is made therein, it rests upon some reasonable basis.

Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531;
St. Louis Consolidated Coal Co. v. Illinois, 185 U. S. 203;
Barrett v. State, 172 Ind. 169, 175 Ind. 112, 229 U. S. 27;
Chandler Coal Co. v. Sams, 170 Ind. 623.

2. That no person has any property right or vested interest in any rule of the common law; that the law, itself, as a rule of conduct, may be changed at the will of the General Assembly unless its action is restricted by constitutional limitations.

Mondou v. New York, etc., Co., 223 U. S. 1 (2d Employers' Liability Cases) and numerous authorities there cited;
Mountain Timber Co. v. Washington, 243 U. S. 219;

Middleton v. Texas Power & Light Co., 249 U. S. 152;

Arizona Copper Co. v. Hammer, 39 Sup. Ct. Rep. 553, 555, and numerous cases there cited.

3. That in pursuance of the proposition announced in subdivision two, *supra*, it is within the constitutional authority of a State legislature to enact employers' liability acts, changing the common law defenses of the employer, and that such acts may be made applicable to railroads alone, because of the inherent danger of their business.

Pittsburgh, etc., R. R. Co. v. Montgomery, 152 Ind. 1;

Bedford Quarries Co. v. Bough, 168 Ind. 671 (holding, however, that the classification made in the Indiana Employers' Liability Act rendered it invalid);

Mo. Ry. Co. v. Mackey, 127 U. S. 205;

Tullis v. L. E. & W. Ry. Co., 175 U. S. 348.

4. Many states have passed workmen's compensation acts, which have been held to be valid against attacks predicated upon the invalidity of such laws under the State and Federal Constitutions, but these laws have been, without exception, based upon a just and reasonable classification.

We append to this brief a list of cases showing the character of the laws involved—that is, whether permissive or compulsory—the persons to whom they apply, including any classes of employers or employees exempted from their provisions, the grounds upon which these laws are attacked; and whether the laws were sustained, or held to be invalid.

This list includes a major portion of the adjudicated

cases, on the question of the validity of workmen's compensation laws.

5. The question to be considered here is whether the legislature may pass a general compensation law, applicable to all employers and employees within the state, and make it compulsory as to one hazardous employment, and elective as to all others, except railroad employees in train service to which it does not apply at all.

We insist that such a classification rests upon no sound, or just basis, and is violative of the State and Federal Constitutions, in the several respects above pointed out, which we desire to consider separately.

B. Section 18 of the Workmen's Compensation Act of Indiana, as amended in 1919, violates the due process of law and equal protection of the law clauses of the Federal Constitution.

1. A private corporation is protected by the due process of law and equal protection of the law clauses of the Fourteenth Amendment.

Covington, etc., Co. v. Sandford, 164 U. S. 578;
Southern Railroad Co. v. Greene, 216 U. S. 400;
Smyth v. Ames, 169 U. S. 466;
Western, etc., Assn. v. Greenburg, 204 U. S. 359.

2. In order to sustain a classification for legislative purposes, it is necessary:

a. That the reason for the classification inhere in the subject matter.

b. That the classification rest on some basis which is natural and substantial.

c. That the classification treat all brought under its influence alike under the same conditions.

d. That it embrace all within the class to which it is naturally related.

Cotting v. Kansas City Stock Yards Co., 183 U. S. 79, 107, 112;

Connelly v. Union Sewer Pipe Co., 184 U. S. 540, 560, 564;

Bedford Quarries Co. v. Bough, 168 Ind. 671, and numerous cases there cited;

Cleveland, Cincinnati, etc., Co. v. Schuler, 182 Ind. 57;

Sperry & Hutchinson Co. v. State, 122 N. E. (Ind. Sup.) 584.

3. If the Act is unconstitutional as to employees it is unconstitutional as to employers.

Mountain Timber Co. v. Washington, 243 U. S. 219.

4. The Employers' Liability Acts were mandatory as to one highly hazardous employment, viz., railroads, and did not affect other employments at all. Here the act is mandatory as to coal mining companies and permissive as to all others, except as to railroad employees engaged in train service, domestic servants, and agricultural employments, to which it does not apply.

In the first instance the Legislature concluded that it was advisable to apply the law to one particular branch of business only; *the Workmen's Compensation Law recognizes its applicability to all businesses, but compels only one particular business to come under it.* The classification is unsound, unjust and discriminatory. Being applicable to all businesses no reason appears why it should not be mandatory as to all, or permissive as to all.

C. Section 18 of the Workmen's Compensation Law as amended is violative of Section 23 of the Indiana Bill of Rights, prohibiting the General Assembly from granting privileges or immunities to any citizen or class of citizens which upon the same terms does not apply equally to all citizens.

1. A corporation is within the meaning of this provision of the Indiana Constitution as construed by the Supreme Court of that State.

Street v. Varney Electrical Supply Co., 160 Ind. 338;
Inland Steel Co. v. Yedinak, 172 Ind. 423, 439.

2. The above referred to section of the Indiana Constitution renders a law invalid if an unreasonable and arbitrary classification has been made.

Street v. Varney Electrical Supply Co., 160 Ind. 338;
Hirth-Krause Co. v. Cohen, 177 Ind. 1, 10.

3. The Employers' Liability Acts of Indiana have been construed by the Supreme Court of Indiana as applicable only to the persons engaged in the hazardous business of operating trains, and it has been held that to apply such statutes to employees engaged in a non-hazardous business would render them invalid under Section 23, Article I of the Indiana Constitution.

Indianapolis Traction & Terminal Co. v. Kinney, 171 Ind. 612, 617;
Cleveland, etc., R. R. Co. v. Foland, 174 Ind. 411;

Ritchey v. Cleveland, etc., R. R. Co., 176 Ind. 542, at 558.

D. Said Section 18 as amended is violative of Section 21 of the Indiana Bill of Rights, providing that no man's property shall be taken without just compensation.

1. Here the law provides that coal mining companies are required to pay for injuries sustained by their employees without negligence, while all other private business employers in Indiana may elect not to do so. This amounts to the taking of the property of coal mining companies without compensation for a public purpose, viz., the protection of employees of coal mines against industrial injuries occasioned without negligence.

ARGUMENT.

Facts Shown by the Evidence.

It is the contention of the plaintiffs that they have shown by the evidence adduced in these causes that Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of Indiana for the year 1919, rests upon no reasonable or sound basis of classification, but on the contrary, that compelling coal mining companies to operate under the law and permitting all other business corporations to reject its provisions is a discriminatory classification, founded on no difference in the businesses.

That Section 18 as amended is invalid, appears clearly, we think, from a consideration of the several suggested bases of fact urged in support of the law.

We desire to consider these several suggestions separately, and, in addition, to show that there is no other basis of fact sufficient to sustain the enactment.

Number of Workmen Affected.

The evidence of Samuel R. Artman (Transcript, page 95) shows that out of seventeen accidents occurring to persons engaged in industrial occupations in this state, one is to a coal miner. This means that Section 18 as amended applies to only six per cent. of the industrial accidents in Indiana, leaving the other ninety-four per cent. of these accidents in the situation that the employer may, if he elects, reject the Compensation Act, with a like privilege to the employe, and in either of such events the employer is only liable in the event it has been guilty of negligence. It therefore can not be successfully urged, as it was in the Compensation Act, applying to the territory of Alaska (*Johnson v.*

Kennecott Copper Co., 248 Fed. 407, 413), that the law is valid because it covers substantially all the persons engaged in hazardous industrial pursuits in Indiana.

Coal mining is not the largest industry in Indiana. The evidence in this case discloses that there are substantially sixty thousand men engaged in the manufacture of iron and steel and allied industries, more than twice as many as are employed in coal mining. (Transcript, page 69.)

In the business of auto manufacturing and repairing, twenty-nine thousand three hundred sixty-six men are engaged. This also exceeds the number of employes in the coal mining business. (Transcript, page 69.)

There are at least four other general employments, with more than five thousand men engaged in each, viz., furniture manufacturing and repairing, glass manufacturing, oil refining and general contractors. (Transcript, page 69.)

DISMEMBERMENTS.

There is possibly no class of industrial injuries resulting in partial or permanent disability to the extent that is caused by dismemberments. It is impossible for a man who has an arm or leg or part of a hand severed to be as efficient from an industrial standpoint as he was before such accident occurred.

It is a highly significant fact that *coal mining stands fifth in the percentage of dismemberments to the number of employes.* The following table shows the total number of employes in the five businesses referred to, the number of dismemberments, and the percentages:

Furniture Manufacturing and Repairing.

No. of Employees.	Dismemberments.	Per Cent.
11,218	64	.57

General Contractors.

5,357	14	.261

Auto Manufacturing and Repairs.

29,366	66	.224

Iron and Steel.

27,720	52	.187

Coal Mining.

26,294	32	.121

(Transcript, pages 69 and 71 to 74.)

TOTAL NUMBER OF ACCIDENTS.

When the ratio of total accidents to number of employes is considered, coal mining stands *twelfth* on the list, which is as follows:

For the year ending October 30, 1918.

Employment.	Employes. No.	Accidents. No. of	Cent. Per
General contractors -----	5,357	1,217	22.7
Transfer, storage and warehouse ----------	604	97	16
Gas manufacturing ------	2,508	457	18.2
Oil refining ----------	5,129	591	11.5
Stone quarrying and cutting ----------	2,315	263	11.3

Glass manufacturing ----	8,377	949	11.3
Iron and steel ----------	60,547	6,097	10 plus
Veneer manufacturing --	1,219	126	9.8
Cement manufacturing --	2,037	203	9.9
Furniture manufacturing and repairs ----------	11,218	1,050	9.4
Explosives ----------	817	73	8.9
Coal mining ----------	26,294	2,162	8.2

(Transcript, page 69.)

These figures demonstrate that, even conceding that hazard is the proper test to determine whether a fair and reasonable classification has been made (which we do not admit), that the risks ordinarily incident to other occupations are much greater than those prevailing in the mining of coal.

Note.—Included in the above figures in the number of employees are only those employees where the employer employs five or more men, while the number of accidents is obtained from the reports of accidents made by all employers, whether employing more or less than five. (Transcript, page 69.)

Outside of the transfer, storage and warehouse business, the other employments were conducted by employers having more than five men in their employment, and the inclusion in the accidents to employees in establishments where less than five men were employed, whereas, in the number of men actually employed, the reports do not include establishments where less than five men are employed, does not substantially affect the percentage of injuries in the above figures. (Transcript, page 87.) The figures as to the transfer, storage and warehouse business were corrected so as to include

therein only the accidents which happened to employers of persons having five or more employees. (Transcript, pages 70 and 71.)

Death Rate.

The death rate in coal mining in Indiana during the year 1918 was *abnormal.*

During 1917, there were but sixty-one fatalities in coal mining in Indiana, although twenty-three thousand nine hundred forty persons were employed, which is but 2.75 killed per thousand.

See Indiana Year Book 1917, page 412. (Transcript, page 94.)

Indiana Year Book 1918, page 477.

It also appears from the same source that the following number of persons per thousand have been killed from 1899 to date in the coal mining industry in Indiana, viz.:

Year.	No. Employed.	Fatalities.	Killed per Thousand.
1899	7,366	15	2.04
1900	8,858	18	2.03
1901	10,296	24	2.33
1902	13,139	24	1.83
1903	15,128	15	.99
1904	17,838	34	1.91
1905	17,856	47	2.63
1906	19,562	31	1.60
1907	19,009	53	2.79
1908	19,092	45	2.36
1909	18,908	50	2.64
1910	21,171	51	2.41

1911	20,778	33	1.60
1912	21,230	37	1.74
1913	21,683	59	2.72
1914	22,110	49	2.21
1915	20,702	54	2.60
1916	21,300	48	2.25
1917	23,940	66	2.75
1918	27,932	114 (should be 112)	4.08 (should be 404 plus)

(Transcript, page 94.)

(Evidence of Carry Littlejohn, Transcript, pages 103 and 104).

The usual death rate among miners in Indiana has never exceeded 2.79 per thousand in twenty years except during 1918. Defendants' own witness, Carry Littlejohn, assistant mine inspector for Indiana, says that this experience in 1918 is abnormal, and accounts for it in three ways:

1. Employment of inexperienced and older men, on account of war conditions.
2. Rush of work due to war.
3. Inability to get proper materials and supplies.

This undisputed evidence shows that this unusual death rate can not continue. *Indeed, the average death rate in coal mining in Indiana is more than one man per thousand less than the average death rate in coal mining in the United States, showing a more careful operation in this state.* Even with the unusual conditions in 1918, Indiana does not exceed the general average in death losses in coal mining in

the United States in normal years. (Transcript, page 103.)

In 1918, with 5,357 employes in General Contracting, the deaths were 21 showing a loss of 3.92 men per thousand; *far exceeding* the normal death rate in coal mining, and lacking but .12 per cent. of equaling last year's death rate in coal mining, certainly not an outstanding difference. (Transcript, pages 69 and 96.)

Character of Injuries.

From the reports made to the State Mine Inspector for the year 1918 (Year Book of 1918, Transcript, page 90) it appears that there was but one permanent injury in the coal mining business in Indiana during that year. Of the accidents reported, totaling 1,591, only 391 were serious and 1,085 are reported as slight.

This evidence is clear and conclusive and establishes that more than sixty per cent. of the injuries sustained by employes engaged in the business of mining coal are slight in character and, of course, that the number of serious injuries is relatively small.

The principal reason for the small number of serious accidents is found in the fact that the State of Indiana has very stringent laws governing the operations of coal mines. For instance, the law which requires the operator of the mine to force one hundred cubic feet of air per minute for each and every person employed in the mine and three hundrd cubic feet of air per minute for each mule, horse or other animal used in the mine through the entire workings of the mine, is sufficient to and does practically eliminate danger from either white or black damp. The law also provides that "every place where fire damp is known, or sup-

posed to exist, shall be carefully examined with a safety lamp by a competent fire boss immediately before each shift." This same pure air law in connection with the law which requires the operator to keep the traveling ways and air ways sprinkled is sufficient to eliminate the danger resulting from gas or dust explosions. In other words, these two sections of the law, if observed, prevent the possibility of danger either from damps or from gas or dust explosions.

There is also a well understood rule or custom of the mine which governs the handling of powder and which, if observed, almost eliminates the possibility of powder explosions.

There is also a statute which makes it the duty of the mine boss to "visit and examine every working place in the mine, at least every alternate date while the miners of such places are, or should be, at work, and shall examine and see that each and every working place is properly secured by timbering and *that the safety of the mine is assured.* He shall see that a sufficient supply of timbers are also on hand at the miners' working place. He shall also see that all loose coal, slate and rock overhead wherein miners have to travel to and from their work *are taken down or carefully secured.* Wherever such mine boss shall have an unsafe place reported to him he shall order and direct that the same be placed in a *safe condition.*"

In view of the fact that having rejected the Compensation Law the defenses of contributory negligence, assumption of risk, and the fellow servant doctrine are not available to the coal operator it must appear from the sections of law heretofore referred to that there is little or no possibility of an accident happening in the coal mine as a result

of damps, explosions, or fall of slate, without liability on the part of the employer. We refer especially to Sections 8579 and 8580 of Burns' Revised Statutes of Indiana, 1914. There are many other sections governing the operation of a mine, but the two sections especially referred to are amply sufficient to show that under the common law rule that the employer is obliged to provide a safe place in which the employee is to perform his labors, there is little possibility of an accident without a clean cut statutory liability. We call especial attention to these facts because the real danger in a coal mine should be by the observance of statutory law reduced to the minimum, while in the factory and the steel and iron mills the dangers are of such a nature that it is impractical to eliminate them. That is to say, the buzz saw and the many other dangers in these other industries can not even by statutory enactment be guarded against.

Appellant introduced in evidence the reports made to the Industrial Board of accidents by certain iron and steel mills, wood manufacturers, stone contractors, and manufacturers of explosives. A list of the more serious injuries reported by these companies is included in the Transcript, pages 105 to 153. We call especial attention to the character of these injuries, showing conclusively many very severe cases of burning, bruising, fractures and amputations. The only evidence as to the character of injuries in the coal mining business is the testimony of the former secretary of the Indiana Industrial Board that the injuries to persons engaged in the coal mining business as to disfigurement or marring the appearance of the employees are very serious; that the reports of employees in the coal mining business show a greater per cent of disfigurement and marring of the face than any other industry in the state. (Transcript, page 71.)

Mr. Carry Littlejohn, Deputy Mine Inspector of Indiana, testified as to working conditions in the mine, black damp and coal damp, but gave no evidence as to the character of injuries generally to miners.

Number of Deaths Does Not Determine Hazard of Occupation From Compensation Standpoint.

The real purpose of a compensation law is that persons who are injured and the dependents of those who are dead shall receive reasonable compensation, without respect to the question of the negligence of the employer, and that thus the risk of industrial accidents shall be borne by the business instead of the employer or the employe, as the case may be, or by society.

While it is, of course, unfortunate that any person should be killed in the pursuit of an industrial occupation, when death results, the industrial and economic situation is less serious than it is when the injured person is permanently disabled. In case of permanent injury, it is necessary that society care not only for the dependents of the injured men, if he has any, but also for himself, while if death results, it is necessary only that his dependents receive reasonable compensation and in many cases there are no such dependents.

This difference is strikingly recognized by the Compensation Law of Indiana. In the event of a worker's death his dependents receive 55 per cent. of his average weekly wages for a period of three hundred weeks, whereas in cases of permanent disability or of permanent partial impairment, the same per cent. of payments of compensation may extend for a period of five hundred weeks.

Section 37 of the Workmen's Compensation Law as amended in 1919, Acts 1919, page 164, regulates the compensation payable in the event of death. Section 31, as amended in 1919, Acts 1919, page 162, fixes the compensation in the event of permanent disability. The latter section provides for payments for five hundred weeks in the following class of cases:

A. For injuries resulting in total permanent disabilities.

B. For the loss of both hands.

C. For the loss of both feet.

D. For the loss of the sight of both eyes.

E. For permanent partial impairments, compensation proportionate to the degree of impairment, not exceeding five hundred weeks.

F. Injuries resulting in temporary total disability.

As stated above, in the event of death the compensation is limited to a period of three hundred weeks.

The law thus recognizes what is the actual fact, that, economically speaking, dismemberment, loss of sight, permanent disability and even permanent partial impairment are more serious and require a greater degree of compensation than death itself.

We also suggest the proposition that it is no more important to the dependents of a deceased coal miner that compensation should be paid to them than it is to the dependents of a man engaged in the general contracting business; that the whole theory of the law is the payment of compensation and that if 3.92 men out of each thousand engaged in general contracting are killed while in pursuit of their occupation, there is the same reason for compensation

being paid to their dependents as there is for requiring compensation to be paid to the dependents of the 4.04 out of each thousand killed while engaged in the business of mining coal. The difference is a very small one. Indeed, in normal years in the coal business the death rate does not exceed 2.79 men per thousand, and has not for a period of more than twenty years. There is, therefore, no real difference as between these two occupations.

The evidence further discloses that forty-six men were killed in the iron and steel industry in Indiana in the year 1918, and no just and fair distinction can be made as between their dependents and the dependents of the persons engaged in mining coal.

Wage Conditions.

This law certainly can not be sustained upon the theory that the general conditions as to wages, etc., in the coal mining business are less favorable than in other industries.

Mr. Phil Penna, at one time President of the Miners' National Union, testified in this respect, and his evidence is not disputed, that miners have been able to earn during the last year on a very conservative basis, from $7.50 to $8.00 a day, theoretically of eight hours, but practically of six hours; that even the men who work above ground receive from $4.65 a day upward for their work. He added that thousands of miners in Indiana had paid income taxes on incomes in excess of $2,500 for the year 1918. (Transcript, page 84.)

These facts demonstrate that the coal mining industry is the highest paid industrial work in Indiana.

Furthermore, it appears by a stipulation that the coal miners employ lawyers to look after all of the legal business

of their members, including the prosecution of personal injury suits. For this purpose each miner pays the sum of ten cents a month to the legal department. In the event of injury or death, any suit for damages for such injury is prosecuted by the attorneys employed by the union, at no expense whatever to the injured man or his dependents except the regular payments of ten cents per month, and, if a recovery is had, the entire sum of money recovered is paid over without abatement to those entitled thereto. (Transcript, pages 86 and 87.)

In other industries in Indiana, where the employer has rejected the act, the industrial worker is required to pay his own attorneys. This, of course, in most instances he must do on a contingent fee basis, where sums varying from twenty-five to fifty per cent. of the amount recovered are charged for this service and the net result to the employe correspondingly reduced.

This condition, therefore, shows a difference between the coal mining industry and other industrial occupations in Indiana, but a difference which is wholly in favor of coal mining and therefore forms no just basis for the passage of a compensation law made compulsory as to this business alone.

The Question Presented.

Appellant challenges the constitutional validity of Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of Indiana for the year 1919.

This section as amended reads as follows:

> "The provisions of this Act, except Sections 3, 4, 10, 11 and 12, shall apply to the State, to all the political divisions thereof, to all municipal corpora-

tions within the State, to persons, partnerships and corporations engaged in mining coal, and to the employees thereof."

The Indiana Workmen's Compensation Act was enacted in the year 1915. (Chapter 106, Acts 1915, pp. 392-417.)

The General Assembly of 1917 amended Sections 2, 28, 59, 60 and 61.

Until the passage of House Bill 110, by the General Assembly of 1919, the Workmen's Compensation Act was permissive as to all employers and employees, except as hereafter noted.

The provisions for rejecting the act are found, primarily, in Section 3, which reads as follows:

> "Sec. 3. Either an employer or an employee, who has excepted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.
>
> The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the industrial board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employee is employed, or by serving it personally upon him: and shall be given by the employee by sending the same in registered letter addressed to the employer at his last known residence or place of business, or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the industrial board."

Section 4 provides, in substance, that contracts made before the Act takes effect, shall be presumed to continue, and that every contract of service made subsequent to the taking effect of the Act shall be presumed to have been made, subject to the provisions of the Act, unless notice is given.

Sections 10, 11 and 12 regulate the liability of employers, where such employers, or their employes, have elected not to operate under the Workmen's Compensation Act.

In the event the employer makes such an election, he is deprived of the following common law defenses:

(a) That the employee was negligent.

(b) That the injury was caused by the negligence of a fellow employee.

(c) That the employee had assumed the risk of the injury.

If the employee elects to reject the act the employer is entitled to defend any action, and to avail himself of the common law defenses of contributory negligence, assumption of risk, and negligence of a fellow servant.

If both employer and employee reject the Act, the liability of the employer is to be determined the same as though he, alone, had rejected the terms of the Act.

Under Section 18, as amended by House Bill 110, all coal mining companies, including this Plaintiff, are required to operate under the provisions of the Workmen's Compensation Act, which is made mandatory as to them, and as to the State and its political subdivisions and municipal corporations.

As to all other employers the Act remains a permissive one, and they may elect not to operate under its provisions, except that railroad employees engaged in train service do not come within the provisions of the law.

Appellant challenges the validity of Section 18 of this law, as amended, but is raising no question as to the remaining part of the Act.

While the Supreme Court of Indiana has not passed upon the constitutionality of the Workmen's Compensation Act of this State, it is well settled that a fair and just compensation law, which is not discriminatory, is not objectionable to the Fourteenth Amendment to the Constitution of the United States, or, indeed, to any other provisions of the Federal Constitution.

Mountain Timber Co. v. Washington, 243 U. S. 219;
New York Central R. R. Co. v. White, 243 U. S. 188;
Arizona Copper Co. v. Hammer, 39 Sup. Ct. Rep. 553 and cases cited.

The grounds of attack upon Section 18, as amended, are as follows:

(1) That it violates the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

(2) That it violates the equal protection of the laws clause of the Fourteenth Amendment of the Constitution of the United States.

(3) That it violates Section 23 of the Indiana Bill of Rights, reading as follows:

> "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."
> Sec. 68, Burns' R. S. 1914.

(4) That it violates Section 21 of the Indiana Bill of Rights, reading as follows:

> "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered."
> Sec. 66, Burns' R. S. 1914.

While admitting that it is within the constitutional authority of a state legislature to pass a workmen's compensation act, in which a fair and reasonable classification is made, the question here to be considered is whether the legislature may enact a general compensation law, applicable to all employers and employees within the state, and make it compulsory as to one hazardous employment, and elective as to all others, except railroad employees in train service, to whom it does not apply at all.

We insist that such a classification rests upon no sound or just basis, and is violative of both the State and Federal Constitutions.

Appellant as a private corporation is entitled to avail itself of the due process of law and equal protection of the law clauses of the Fourteenth Amendment.

It is undoubtedly true that legislatures may make reasonable classifications, but in order that a classification when made shall be valid, it is necessary that it rest on some basis which is *natural and substantial*, that the *"rea-*

son for the classification inhere in the subject matter", and that the classification treat all brought under its influence alike under the same conditions.

In *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, the Supreme Court of the United States held a law of Kansas, general in its terms, but which really applied to the Kansas City Stock Yards only and which limited the charges to be made for its services to be invalid, as denying the equal protection of the laws in violation of the Fourteenth Amendment. The Court quotes with approval the following language from *Bell's Gap Railroad v. Pennsylvania*, 134 U. S. 232, 237:—

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay

down any general rule or definition on the subject that would include all cases."

The Illinois General Assembly in 1893 passed an Anti-Trust Law which applied to all trusts and combinations, except that by Section 9 thereof, it was provided:—

> "Sec. 9. The provisions of this Act shall not apply to agricultural products or livestock while in the hands of the producer or raiser—"

This Court (*Connelly v. Union Sewer Pipe Co.*, 184 U. S. 540), in holding this statute invalid, said in part:—

> "The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this court, were not included in the grants of power to the general government, and therefore were reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be

deemed unconstitutional and void. *Gibbons v. Ogden*, 9 Wheat. 1, 210; *Sinnot v. Davenport*, 22 How. 227, 243; *Missouri, Kansas & Texas Railway v. Haber*, 169 U. S. 613, 626.

"What may be regarded as a denial of the equal protection of the laws is a question not always easily determined, as the decisions of this court and of the highest courts of the States will show. It is sometimes difficult to show that a State enactment, having its source in a power not controverted, infringes rights protected by the national Constitution. No rule can be formulated that will cover every case. But upon this general question we have said that the guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.' *Missouri v. Lewis*, 101 U. S. 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws'," undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be im-

posed upon one than such as is prescribed to all for like offenses.' *Barbier v. Connolly*, 113 U. S. 27, 31. This language was cited with approval in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In *Hayes v. Missouri*, 120 U. S. 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed.' 'Due process of law and the equal protection of the laws,' this court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' *Duncan v. Missouri*, 152 U. S. 377, 382. Many other cases in this court are to the like effect.

"These principles, applied to the case before us, condemn the statute of Illinois. We have seen that under that statute *all* except producers of agricultural commodities and raisers of live stock, who combine their capital, skill or acts for any of the purposes named in the act, may be punished as criminals, while agriculturists and livestock raisers, in respect of their products or live stock in hand, are exempted from the operation of the statute, and may combine and do that which, if done by others, would be a crime against the State. The statute so provides, notwithstanding persons engaged in trade or in the sale of merchandise and commodities, within the limits of a State, and agriculturists and raisers of livestock, are all in the same general class, that is, they are all alike engaged in domestic trade, which is, of right open to all, subjects to such regulations, applicable alike to all in like conditions, as the State may legally prescribe.

"The difficulty is not met by saying that, generally speaking, the State when enacting laws may, in its discretion, make a classification of persons,

firms, corporations and associations, in order to subserve public objects. For this court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground, some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf, Colorado & Santa Fe Railway v. Ellis*, 165 U. S. 150, 155, 159, 160, 165. These principles were recognized and applied in *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, in which it was unanimously agreed that a statute of Kansas regulating the charges of a particular stock yards company in the State, but which exempted certain stock yards from its operation, was repugnant to the Fourteenth Amendment in that it denied to that company the equal protection of the laws."

In *Cleveland, etc., Co. v. Schuler*, 182 Ind. 57, the Supreme Court of Indiana had occasion to pass upon the validity of an Act of the Indiana General Assembly requiring railroads to pay any employee in full within 72 hours after he had been discharged, or had voluntarily quit the service. The act was held to be invalid. The Court said:

"It is true, as appellant concedes, that railroads may be placed in a class by themselves for some legislative purposes, but only for such purposes as have to do with duties peculiar to them as carriers or with the dangers peculiar to their operation."

The appellee in the above case relied upon the case of *Seelyville Coal Co. v. McGlosson*, 166 Ind. 561. (Semi-monthly pay law), but the Supreme Court clearly pointed out the distinction between the two cases as follows:—

"1. It is true, as appellant concedes, that railroads may be placed in a class by themselves for some legislative purposes, but only for such purposes as have to do with duties peculiar to them as carriers or with the dangers peculiar to their operation. The rule is thus stated in *Bedford Quarries Co. v. Bough* (1907), 168 Ind. 671, 674, 14 L. R. A. (N. S.) 418: 'The legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for and justify the making of the class; that is, the reason for the classification must inhere in the subject-matter, and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all within the class to which it is naturally related. Neither mere isolation nor arbitrary selection is a proper classification.'

"There is nothing in the act under consideration which suggests a valid basis for the classification which it makes.

"2. It is not designed to regulate the business of common carriers nor has it any reference to the

hazards peculiar to the operation of railroads. In brief, no good reason appears for requiring railroads to pay, in accordance with the provisions of this act, those who leave their service, while manufacturing corporations and other employers of labor are excepted from its operation. In the case of *Gulf, etc., R. Co. v. Ellis* (1897), 165 U. S. 150, 17 Sup. Ct. 255, 41 L. ed. 666, the Supreme Court of the United States had under consideration an act passed by the legislature of the State of Texas which provided that if railroad companies, under certain conditions, failed to pay valid claims 'for personal services rendered or labor done,' etc., within thirty days after such claims were duly presented, the claimant, in recovering a judgment thereon, should recover also certain attorney's fees. In holding the act unconstitutional the court, speaking by Mr. Justice Brewer, used the following language, which we deem applicable here: 'It is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. * * * If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. * * * That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the legislature, in the exercise of its police powers, may justly require many things to be done by them to secure life and property. * * * But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. The hazardous business of railroading carries with

> it no special necessity for the prompt payment of debts. That is a duty resting upon all debtors, and while in certain cases there may be a peculiar obligation which may be enforced by penalties, yet nothing of that kind springs from the mere work of railroad transportation.' See, also, *School City of Rushville v. Hayes* (1904), 162 Ind. 193, 203; *Seaboard Air line Railway v. Simon* (1908), 56 Fla. 545, 47 South 1001, 20 L. R. A. (N. S.) 126, 16 Ann. Cas. 1234; *Missouri, etc., R. Co. v. Braddy*, 135 S. W. (Tex. Civ. App.) 1059."

Decisions of the Supreme Court of Indiana and of the Supreme Court of the United States sustaining Employers' Liability Statutes applicable to railroads only are not decisive of this case for the following reasons:—

(a) Railroads have long been held to be so necessarily and inherently dangerous in their operation to the life and limb of employees that legislation respecting them alone and separating them from all other kinds of business has been held not to be an unconstitutional discrimination, "because no other business is beset with so many and severe dangers as those encountered by employees in preparing for, and during, the movement and operation of railroad trains."

Indianapolis Traction, etc., Co. v. Kinney, 171 Ind. 612, 616.

(b) The Employers' Liability Acts were mandatory as to the one most hazardous employment, viz.: railroads, and did not affect other employments at all. Here the act is mandatory as to coal mining companies and permissive as to all others, except as to railroad employees engaged in train service, to which it does not apply.

In the first instance, the legislature has concluded that it was advisable to apply the law to one particular branch of business only; this law recognizes its *applicability* to all businesses but *compels* only one particular business to come under it. The classification is, therefore, not merely unsound and unjust, but it is discriminatory.

(c) Section 2 of the Workmen's Compensation Act, as amended in 1917 (Acts 1917, p. 673) excludes from the operation of the law "railroad employees engaged in train service." *Thus this law wholly excludes from its operation the hazardous part of the most dangerous business, is permissive as to the non-hazardous part of the same business (railroading), and compels owners of coal mines to operate under its provisions.* These considerations are not urged in an attempt to show that Section 2, as amended, is invalid, but in order to demonstrate the kind of a classification which the law makes, which classification has no sound basis upon which to rest, and thus show that Section 18, as amended, is invalid.

(4) The cases upholding Workmen's Compensation Acts were decided with reference to statutes which, in a general way, made one or more of the following classifications:—

a. Including all hazardous employments.
b. Including a large number of fairly selected extra-hazardous employments.
c. Including all employers and employees.
d. Including all employers and employees, except domestics, farm laborers, casuals, etc.
e. Including all employers, except those having less than five persons regularly employed.

f. Including all employees, except those for whom special provision is made by the Federal law.

We have failed to find any law which attempts to make a Workmen's Compensation Act permissive as to all employments, except one, and mandatory as to it. The unfairness of such a classification is emphasized when coal mining is selected as the one business as to which the law is made compulsory, and employer and employees in blasting, quarrying, iron and steel manufacturing, and others are permitted to elect whether or not they will come under its provisions, and employees of railroads in train service are excluded. Section 18, as amended, is violative of Section 23 of the Indiana Bill of Rights, which reads as follows:—

> "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."
> Section 68, Burns' R. S. 1914.

A corporation is within the meaning of this section of the Indiana Constitution, as construed by the Supreme Court of that State.

> *Street v. Varney Electrical Supply Company*, 160 Ind. 338;
> *Inland Steel Co. v. Yedinak*, 172 Ind. 423, 439.

In *Inland Steel Co. v. Yedinak, supra*, the objection that the statute violated Article 1, Section 23, of the Indiana Constitution was passed upon, but the statute was upheld, because it forbade the employment of certain children in any manufacturing or mercantile establishment, mine,

quarry, laundry, renovating works, bakery or printing office. The Court said:—

> "The classification is natural, just and reasonable, and no substantial objection to its validity on this ground has been advanced."

The above quoted section of the Indiana Constitution renders a law invalid if an unreasonable and arbitrary classification is made, and has been held to be, so far as the subject of classification is concerned, substantially the same as the privileges and immunities clause of the Fourteenth Amendment, except as hereafter noted.

Street v. Varney Electrical Supply Company, supra;
Hirth-Krause Co. v. Cohen, 177 Ind. 1, 10.

It has been urged in certain cases in this Court that laws abolishing the common law fellow servant rule, as to all employees of railroad companies, were arbitrary and a denial of the equal protection of the laws, and the due process of law, unless such laws were limited, in their effect, to employees imperiled by the hazardous business of operating railroad trains, or engines.

This contention has been denied, so far as the Fourteenth Amendment to the Constitution of the United States is concerned.

Mobile, etc., R. R. Co. v. Turnipseed, 219 U. S. 35-40;
Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36.

And, insofar as the following Indiana cases determine the effect of such legislation with respect to its invalidity under the Fourteenth Amendment, they have been disapproved by this court.

Indianapolis, etc., Co. v. Kinney, 171 Ind. 612;
Cleveland, etc., R. R. Co. v. Foland, 174 Ind. 411.

However, it has been repeatedly held by the Supreme Court of Indiana, under the Employers' Liability Acts, that to extend the benefit of the statute to all employees of the railroad company would render it invalid under Section 23, Article I, of the Indiana Constitution.

Indianapolis T. & T. Co. v. Kinney, 171 Ind. 612-617;
Cleveland, etc., R. R. Co. v. Foland, 174 Ind. 411;
Richey v. Cleveland, etc., R. R. Co., 176 Ind. 542, at p. 558.

The case of *Richey v. Cleveland, etc., Ry. Co., supra,* was decided after the two cases above referred to in this Court, viz.: *Mobile, etc., R. R. Co. v. Turnipseed,* and *Louisville & Nashville R. R. Co. v. Melton;* and, notwithstanding the decision of this court as to the interpretation of the Fourteenth Amendment on the question of classification, the Supreme Court of Indiana stands by its rule that the inclusion of employees not engaged in a hazardous part of the railroad business, the terms of the Employers' Liability Act of Indiana would render it repugnant to Section 23 of Article I, of the Indiana Constitution.

Thus demonstrating the broader construction given to

this clause of the Indiana Constitution, than that given by this court to a similar clause of the Fourteenth Amendment.

The language of the Employers' Liability Act is, "That every railroad or other corporation, except municipal, operating in this State, shall be liable for damages for personal injuries suffered *by any employee* while in its service."

The Workmen's Compensation act provides, in Section 2, "from and after the taking effect of this Act, *every employer and every employee*, except as herein stated, shall be presumed to have accepted the provisions of this Act," etc.

The Supreme Court of Indiana, construed the Employers' Liability Act as applicable only to such employees as were engaged in the hazardous part of the railroad business, but it is impossible so to construe the Workmen's Compensation Act, because, in terms, it applies to every employer and every employee, and this has been the practical interpretation and construction of the law, ever since its enactment.

Therefore, we insist, that inasmuch as the Compensation Law, by Section 18, as amended, is made compulsory upon "persons, partnerships and corporations engaged in mining coal, and to the employees thereof," it is invalid under the provisions of the State Constitution, because it imposes a liability upon coal mining companies with respect to their employees not engaged in the hazardous part of the business, and as to all other private business enterprises within the state, except railroad employees in train service, which are excluded, it is purely optional.

In the case of *Sperry & Hutchinson Co. v. State of Indiana*, decided very recently by the Supreme Court of Indiana (122 N. E. Rep. 584), the classification of the Trading Stamp Act was held to be invalid under Section 23 of Article I of the Indiana Constitution.

That act made it unlawful for persons and corporations to which it applied to engage in the distribution and redemption of trading stamps, coupons, or like tokens, symbols or devices, without first procuring a license, at a prohibitive cost. But the Act applied only to those corporations which were organized for the purpose of redeeming trading stamps, either in cash, or without articles of merchandise not the product of its own manufacture, and to individuals so engaged; while all other persons or corporations might engage in the business without let or hindrance.

In other words, if a manufacturing corporation redeemed its trading stamps out of merchandise manufactured by itself, there was no liability.

The court rightly condemned this classification. Among other things, it said:

> "An act of the kind under consideration can be justified only on the theory that the business against which it is directed was of such a nature as to affect and to influence injuriously the public morals and the general welfare of society and that the purpose of passing the act was to shield the public from the evil potentialities of the business. Considering the classification made in the light of the avowed purpose and object of the act, it is difficult to assume a state of facts which would afford a reasonable ground upon which to base a distinction between the classes formed by the act. Let us suppose that two corporations are engaged in the business under discussion, one of which is organized for the purpose of conducting such business and of making the redemption contemplated with money or with articles of merchandise acquired by purchase while the other corporation is organized for the purpose of manufacturing, and it makes the redemption in articles which are the product of its own manufacture. If the supposed business of each be considered from the

> standpoint of the effect on the public morals and the general welfare of society, can it be said for any conceivable reason or under any supposable state of facts that the business conducted by the former is more deleterious in its effects on society than that conducted by the latter? The classification adopted must rest on some reason which inheres in the subject-matter with which the legislation deals. The reason must be substantial and not merely artificial. *Bedford Quarries Co. v. Bough*, 168 Ind. 671.
>
> "The court can conceive of no reason upon which the classification adopted in the act can be sustained. Certainly no reason can be suggested resting on any consideration of public morals or general public welfare, and reasons based on any other considerations would be without force."

Applying the ruling of the Supreme Court of Indiana, in the case above cited, to the instant case, it would seem that the classification here made is wholly objectionable under the Indiana Constitution, for the following reasons:

1. Section 18 of the Workmen's Compensation Act, as amended in 1919, requires all employees in the coal mining business to be paid compensation; every person and corporation engaged in the business must operate under the Compensation Act. Whereas, to all other private businesses the Act is permissive only, except that railroad employees, in train service, are wholly excluded from its operation.

2. A carpenter engaged in work above ground, for a coal mining company, a clerical employee in its office, or a driver of its teams, can recover compensation against the company, although there is no negligence, while just across the street another corporation may be engaged in stone quarrying, which is certainly as hazardous as the coal mining business, and if that company has elected to reject

the act, even the employees engaged in the hazardous part of the business can have no recovery, unless the company is guilty of negligence.

In the case of *Mountain Timber Co. v. Washington*, 243 U. S. 219, the Supreme Court of the United States uses the following language:

> "While plaintiff in error is an employer, and cannot succeed without showing that its constitutional rights as employer are infringed (*Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359; *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576), yet it is evident that the employer's exemption from liability to private action is an essential part of the legislative scheme and the quid pro quo for the burdens imposed upon him, so that if the act is not valid as against employes it is not valid as against employers."

Thus we are entitled to consider not only the unreasonableness and injustice of the classification as to employer, but the unreasonableness and injustice of the classification as to employees as well, and with equal force.

Section 18, as amended, is violative of Section 21 of the Indiana Bill of Rights, reading as follows:

> "No man's particular services shall be demanded without compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered."
> Sec. 66, Burns' R. S. 1914.

If it can be truthfully said that the injuries resulting from accidents in which there is no negligence on the part of the employer, and consequently no damages recoverable by the injured employee or his dependents, lay a burden on

society generally, the coal industry, by taxation, bears its proportionate part of such burden as to all other industries in the State of Indiana, who do not see fit to voluntarily accept the provisions of the compensation law. In addition, the coal industry must bear its own such burdens alone, because it is, by the Act in controversy, forced to accept the provisions of the Compensation law. In other words, all other industries in the State may reject the Compensation law and leave such burdens as they are not guilty of negligence in producing to be borne by the tax-paying public, of which the coal industry is a part, and the coal industry, in addition to bearing its proportionate part of such burdens, must bear its own burdens alone. This amounts to taking private property for public use without compensation. It is also a taking of property without due process of law, and a denial of the equal protection of the law. It is also an unreasonable, arbitrary and unjust classification. In fact, no reason can be offered for the classification. No industry is more lawful, nor more necessary, nor more beneficial to all the people than the coal industry, and many other industries are equally as hazardous, and some even more hazardous than the coal industry. The employees of no other industry are better paid, nor better organized than the employees of the coal industry. The miners' union of Indiana have their personal injury lawyers employed by the year, and no accident or injury is overlooked, and no fifty per cent. contingent fee contract is entered into by the injured employee or his dependents. There is not the waste that has heretofore been set up as a reason or justification for Compensation laws. These facts are all common knowledge in Indiana, and were all well known to the General

Assembly at the time the Act now under consideration was passed.

In *Lindsley v. Natural Carbonic Gas Company*, 220 U. S. 61, this court in stating the rules by which a classification must be tested, among other things, says:

> "3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time that the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary.
>
> In that case the averments of the bill shed but little light upon the classification."

But in any event we do not understand the language of this court as meaning that a law will be sustained if from the averments of the bill the evidence in the case and facts "within the range of common knowledge" show that the classification is essentially arbitrary and unjust.

Is Classification Justified?

Appellees justify the classification on the sole basis of hazard. They allege in their answer first, that the coal industry is the most hazardous industry in the state, and second, that the injuries sustained by the workmen result from more "numerous, diverse and varied" hazards than in any other occupation.

The first alleged justification is not supported by the evidence. On the contrary, the evidence shows conclusively that there are other industries in Indiana at least equally as hazardous as the coal industry.

The second alleged justification is also not supported by the evidence, but if it were, in our opinion it would not be a reasonable justification for a classification. That an industry has more variety in the nature of the injuries sustained by its employees is no reasonable basis, as we view it, for legislative classification.

Appellant contends that the classification is not justified on the basis of hazard, neither as to the extent nor as to the variety of the injuries sustained.

If not justified on the basis of hazard then the question is on what basis can the classification be justified, if any. It is alleged in appellees' answer that practically all other industries had elected to accept the Indiana Compensation Law, thus leaving the inference that the compulsory features herein complained of was not necessary as to such other industries. It is also alleged in appellees' answer that practically all the coal industry had elected to reject the Compensation Law, thus leaving the inference that the compulsory feature *was* necessary as to the coal industry. In our opinion these allegations utterly fail to justify the classification. The other industries referred to are left free to reject the Compensation Law at their pleasure. The Compensation Law with them is not a law but a convenience which they may use or disregard as they see fit. On the other hand these allegations, if they do anything, show that while the Legislature was not willing (either because it did not deem it necessary or because it did not desire to so act) to mandate the other industries referred to, yet it was willing to mandate the coal industry. In our opinion these allegations positively show an arbitrary attitude of mind toward the coal industry.

Appellees also allege in their answer that without the compulsory feature of the Compensation Law the coal operators will continue to operate under the liability laws of the State of Indiana (we have shown them to be stringent) and that "employees and dependents thereof will thereby be deprived of the benefits of the Workmen's Compensation Laws of Indiana, and be subjected to the delays, expenses, inadequate settlements, and vexations incident to the collection and attempted collection of damages, and in many cases said employees and dependents under said liability laws will not be able to establish their causes of action in the courts and will be entirely defeated and without any remedy or redress, and will become the objects of charity."

In answer to appellees' contention as above set out, we beg to suggest that it is argument which is as applicable to all other hazardous industries in the State of Indiana as to the coal industry, and, in the main, it is more applicable because of the fact it is admitted by appellees that the United Mine Workers of Indiana "employ attorneys at an annual salary to handle and prosecute personal injury claims and suits and compensation claims", and the evidence shows that there are no contingent fees or unnecessary expenses incurred in connection with the prosecution of said suits.

In view of the issues in this case, the complaint on the part of appellant and the answer on the part of appellee, we contend that the classification must be upheld, if at all, upon the theory of appellees' answer, and it is our opinion that the facts relied upon by appellee must in fairness be decided in favor of appellant. We hold that appellees in their answer have utterly failed to conceive a state of facts which reasonably sustains the classification.

Equal Laws.

In the opinion in the case of *Yick Wo vs. Hopkins*, 118 U. S., page 356 at page 369, this Honorable Court says that, *"the equal protection of the laws is a pledge of the protection of equal laws,"* and in the opinion in the case of *Mountain Timber Company v. Washington*, 243 U. S., page 219 at page 234, this Honorable Court says, *"While plaintiff in error is an employer, and cannot succeed without showing that its constitutional rights as employer are infringed, yet it is evident that the employer's exemption from liability to private action is an essential part of the legislative scheme and the quid pro quo for the burdens imposed upon him, so that if the act is not valid as against employees, it is not valid as against employers."*

In view of the force and effect of the above quoted legal proposition, appellant contends that the conclusion is inevitable that the employees of the other hazardous industries in the State of Indiana have not the protection of equal laws afforded the employees in the coal industry, and that the employers in the coal industry are bearing burdens not borne by other industries equally as hazardous as the coal industry.

Respectfully submitted,

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APPENDIX.

A.

WORKMEN'S COMPENSATION ACT OF INDIANA, ENACTED IN 1915, AS AMENDED IN 1917 AND 1919.

An Act to promote the prevention of industrial accidents: To cause provisions to be made for adequate medical and surgical care for injured employees: To establish rates of compensation for personal injuries or death sustained by employees in the course of employment: To provide methods for insuring the payment of such compensation: To create an industrial board for the administration of the act and to prescribe the powers and duties of such board: To abolish the state bureau of inspection and provide for the transfer to said industrial board certain rights, powers and duties of said state bureau of inspection.

PART I.

RIGHTS AND REMEDIES.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That this act shall be known as "The Indiana Workmen's Compensation Act."

Sec. 2. From and after the taking effect of this act, every employer and every employee, except as herein stated, shall be presumed to have accepted the provisions of this act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby: unless he shall have given prior to any accident

resulting in injury or death notice to the contrary in the manner herein provided. This act shall not apply to railroad employees engaged in train service.

Sec. 3. Either an employer or an employee, who has excepted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the Industrial Board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employee is employed, or by serving it personally upon him; and shall be given by the employee by sending the same in registered letter addressed to the employer at his last known residence or place of business, or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the Industrial Board.

Sec. 4. Every contract of service between any employer and employee covered by this act, written or implied, now in operation or made or implied prior to the taking effect of this act, shall, after the act has taken effect, be presumed to continue; and every such contract

made subsequent to the taking effect of this act shall be presumed to have been made subject to the provisions of this act: unless either party shall give notice, as provided in Section 3, to the other party to such contract that the provisions of this act other than Sections 10, 11 and 67 are not intended to apply.

A like presumption shall exist equally in the case of all minors unless notice of the same character be given by or to the parent or guardian of the minor.

Sec. 5. Every employer who accepts the compensation provisions of this act shall insure the payment of compensation to his employees and their dependents in the manner hereinafter provided, or procure from the Industrial Board a certificate authorizing him to carry such risk without insurance, and while such insurance or such certificate remains in force he or those conducting his business shall be liable to any employee and his dependents for personal injury or death by accident arising out of and in the course of employment only to the extent and in the manner herein specified.

Sec. 6. The rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury or death.

Sec. 7. Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

Sec. 8. No compensation shall be allowed for an injury or death due to the employee's intentionally self-inflicted injury, his intoxication, his commission of a felony

or misdemeanor, his wilful failure or refusal, to use a safety appliance, his wilful failure or refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous place, his wilful failure or refusal to perform any statutory duty or to any other wilful misconduct on his part. The burden of proof shall be on the defendant.

Sec. 9. This act, except Section 67, shall not apply to casual laborers, as defined in clause (b) of Section 76, nor to farm or agricultural employees, nor to domestic-servants, nor to the employers of such persons, unless such employees and their employers file with the Industrial Board their voluntary joint election to be so bound.

Sec. 10. Every employer who elects not to operate under this act shall not in any suit at law by an employee to recover damages for personal injury or death by accident be permitted to defend any such suit at law upon any one or all of the following grounds:

(a) That the employee was negligent;

(b) That the injury was caused by the negligence of a fellow employee;

(c) That the employee had assumed the risk of the injury.

Sec. 11. Every employee who elects not to operate under this act shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this act, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

Sec. 12. When both the employer and employee elect not to operate under this act, the liability of the employer shall be the same as though he alone had rejected the terms of this act, and in any suit brought against him the employer shall not be permitted to avail himself of any of the common law defenses cited in Section 11.

Sec. 13. Whenever an injury or death, for which compensation is payable under this act, shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages to respect thereto, the injured employee, or his defendants, in case of death, at his or their option, may claim compensation from the employer or proceed at law against such other person to recover damages or may proceed against both the employer and such other person at the same time, but he or they shall not collect from both; and, if compensation is awarded and accepted under this act, the employer, having paid compensation or having become liable therefor, may collect in his own name or in the name of the injured employee, or, in case of death, in the name of his dependents from the other person in whom legal liability for damage exists, the compensation paid or payable to the injured employee or his dependents.

Sec. 14. The State, any political division thereof, any municipal corporation, any corporation, partnership or person, contracting for the performance of any work without exacting from the contractor a certificate from the Industrial Board showing that such contractor has complied with Section 68 of this act, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurses' charges, and burial expenses on account of the injury or death of any employee of such

contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

Any principal contractor, intermediate contractor, or sub-contractor, who shall sublet any contract for the performance of any work, without requiring from such sub-contractor a certificate from the Industrial Board, showing that such sub-contractor has complied with Section 68 hereof, shall be liable to the same extent as such sub-contractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such sub-contractor due to an accident arising out of and in the course of the performance of the work covered by such sub-contract.

That the State, any political division thereof, any municipal corporation, any corporation, partnership, person, principal contractor, intermediate contractor, or sub-contractor, paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under the foregoing provisions of this section, may recover the amount paid from any person who, independently of such provisions, would have been liable for the payment thereof.

Every claim, filed with the Industrial Board under this section, shall be instituted against all parties liable for payment, and said board, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

Sec. 15. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act.

Sec. 16. All rights of compensation granted by this act shall have the same preference or priority of the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Sec. 17. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Sec. 18. The provisions of this act except Sections 3, 4, 10, 11 and 12, shall apply to the State, to all political divisions thereof, to all municipal corporations within the State, to persons, partnerships, and corporations engaged in mining coal, and to the employees thereof.

Sec. 19. This act, except Section 67, shall not apply to employees engaged in interstate or foreign commerce, nor to their employers, in case the laws of the United States provide for compensation or for liability for injury or death by accident of such employees.

Sec. 20. Every employer and employee under this act, except as provided in Section 19, shall be bound by the provisions of the act whether injury by accident or death resulting from such injury occurs within the State or in some other state or in a foreign country.

Sec. 21. The provisions of this act shall not apply to injuries or death nor to accidents which occurred prior to the taking effect of the act.

PART II.

COMPENSATION SCHEDULE.

Sec. 22. Unless the employer or his representative shall have actual knowledge of the occurrence of an injury or death at the time thereof or shall acquire such knowl-

edge afterward, the injured employee or his dependents, as soon as practicable after the injury or death resulting therefrom, shall give written notice to the employer of such injury or death.

Unless such notice is given or knowledge acquired within thirty days from the date of the injury or death, no compensation shall be paid until and from the date such notice is given or knowledge obtained. No lack of knowledge by the employer or his representative and no want, failure, defect or inaccuracy of the notice shall bar compensation, unless the employer shall show that he is prejudiced by such lack of knowledge or by such want, failure, defect or inaccuracy of the notice, and then only to the extent of such prejudice.

Sec. 23. The notice provided for in the preceding section shall state the name and address of the employee, the time, place, nature and cause of the injury or death, and shall be signed by the injured employee or by some one in his behalf or by one or more of the dependents, in case of death, or by some person in their behalf. Said notice may be served personally upon the employer, or upon any foreman, superintendent or manager of the employer to whose orders the injured or deceased employee was required to conform or upon any agent of the employer upon whom a summons in a civil action may be served under the laws of the state, or may be sent to the employer by registered letter, addressed to his last known residence or place of business.

Sec. 24. The right to compensation under this act shall be forever barred unless within two years after the injury, or if death results therefrom, within two years after such death, a claim for compensation thereunder shall be filed with the Industrial Board.

Sec. 25. During the first thirty days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employee an attending physician, for the treatment of his injuries, and in addition thereto such surgical, hospital and nurse's services and supplies as the attending physician or the industrial board may deem necessary.

And during the whole or any part of the remainder of the period of disability or impairment resulting from the injury, the employer may continue to furnish such physician, services and supplies. If, by reason of the nature of the injury or the process of recovery treatment is necessary for a longer period than thirty days, the Industrial Board may require the employer to furnish such treatment for an additional period, not exceeding thirty days. The refusal of the employee to accept such service and supplies, when so provided by the employer, shall bar the employee from all compensation during the period of such refusal unless in the opinion of the Industrial Board, the circumstances justify such refusal.

If in an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital or nurse's services and supplies as herein specified, or for other good reason, a physician other than that provided by the employer treats the injured employee within the first thirty days or necessary and proper surgical, hospital, or nurse's services and supplies are procured within said period, the reasonable cost of such service and supplies shall, subject to the approval of the Industrial Board, be paid by the employer.

Sec. 26. The pecuniary liability of the employer for medical, surgical and hospital service herein required shall

be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

Sec. 27. After an injury and during the period of resulting disability, the employee, if so requested by his employer or ordered by the Industrial Board, shall submit himself to examination, at reasonable times and places, by a duly qualified physician, or surgeon designated and paid by the employer or the Industrial Board. The employee shall have the right to have present at any such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in the hearings provided for in this act, or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this act. If the employee refuses to submit himself to or in any way obstructs such examination, his right to compensation and his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Board the circumstances justify the refusal or obstruction.

The employer, or the Industrial Board, shall have the right in any case of death to require an autopsy at the expense of the party requiring same.

Sec. 28. No compensation shall be allowed for the first seven calendar days of disability resulting from an injury,

except the benefits provided for in Section 25; but if disability extends beyond that period compensation shall commence with the eighth day after the injury.

Sec. 29. Where the injury causes total disability for work, there shall be paid to the injured employee during such total disability, but not including the first seven days thereof, a weekly compensation equal to fifty-five percent of his average weekly wages for a period of not to exceed five hundred weeks.

Sec. 30. Where the injury causes partial disability for work, there shall be paid to the injured employee during such disability, but not including the first seven days thereof, a weekly compensation equal to one-half of the difference between his "average weekly wages" and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks.

In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

Sec. 31. For injuries in the following schedule the employee shall receive in lieu of all other compensation, on account of said injuries, a weekly compensation of fifty-five percent of his average weekly wages for the periods stated for said injuries respectively to-wit:

(a) Amputations: For the loss by separation, of the thumb, sixty weeks, of the index finger forty weeks, of the second finger thirty-five weeks, of the third or ring finger thirty weeks, of the fourth or little finger twenty weeks, of the hand by separation below the elbow joint two hundred weeks, of the arm above the elbow joint two hundred and fifty weeks, of the big toe sixty weeks, of the second toe thirty weeks, of the third toe twenty weeks of the fourth

toe fifteen weeks, of the fifth or little toe ten weeks, of the foot below the knee joint one hundred and fifty weeks and of the leg above the knee joint two hundred weeks. The loss of more than one phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two phalanges of a finger shall be considered as the loss of the entire finger. That the loss of not more than one phalange of a thumb or toe shall be considered as the loss of one-half of the thumb or toe and compensation shall be paid for one-half of the period for the loss of the entire thumb or two. That the loss of not more than two phalanges of a finger shall be considered as the loss of one-half the finger and compensation shall be paid for one-half of the period for the loss of the entire finger.

(b) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange shall be considered as the equivalent of the loss, by separation, of the arm, hand, thumb, finger, leg, foot, toe or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(c) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe or phalange.

(d) For injuries resulting in total permanent disability five hundred weeks.

(e) For the loss of both hands, or both feet, or the sight of both eyes or any two of such losses in the same accident five hundred weeks.

(f) For the permanent loss of the sight of an eye or its reduction to one-tenth of normal vision with glasses,

one hundred and fifty weeks, and for any other permanent reduction of the sight of an eye compensation shall be paid for a period proportionate to the degree of such permanent reduction.

(g) For the permanent and complete loss of hearing, one hundred weeks.

(h) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the Industrial Board, not exceeding five hundred weeks.

(i) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the Industrial Board, not exceeding two hundred weeks.

(j) For injuries causing temporary total disability for work there shall be paid to the injured employee during such total disability but not including the first seven calendar days thereof, a weekly compensation equal to fifty-five percent of his average weekly wages for a period not to exceed five hundred weeks.

(k) For injuries causing temporary partial disability for work compensation shall be paid to the injured employee during such disability, but not including the first seven calendar days, a weekly compensation equal to fifty-five percent of the difference between his average weekly wages and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks. In case the partial disability begins after the period of temporary total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

(l) No compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work for the first seven calendar days of disability resulting from such injuries except the benefits provided for in Section 25; but if disability extends beyond that period, compensation shall commence with the beginning of the eighth day of such disability.

Sec. 32. If an injured employee refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless in the opinion of the Industrial Board such refusal was justifiable.

Sec. 33. If an employee has sustained a permanent injury in another employment than that in which he received a subsequent permanent injury by accident, such as specified in Section 31, he shall be entitled to compensation for the subsequent injury in the same amount as if the previous injury had not occurred.

Sec. 34. If an employee received an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless it be for a permanent injury, such as specified in Section 31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this act.

Sec. 35. If an employee receives a permanent injury such as specified in Section 31, after having sustained another permanent injury in the same employment he shall be entitled to compensation for both injuries but the total

compensation shall be paid by extending the period and not by increasing the amount of weekly compensation.

When the previous and subsequent permanent injuries result in total permanent disability, compensation shall be payable for permanent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

Sec. 36. When an employee receives or is entitled to compensation under this act for an injury and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support.

Sec. 37. When death results from the injury within three hundred weeks, there shall be paid a weekly compensation equal to fifty-five percent of the deceased's average weekly wages during such remaining part of three hundred weeks as compensation shall not have been paid to the deceased on account of the injury, in equal shares to all dependents of the employee wholly dependent upon him for support at the time of the death. If the employee leaves dependents only partially dependent upon his earning for support at the time of his injury, the weekly compensation to those dependents shall be in the same proportion to the weekly compensation for persons wholly dependent as the average amount contributed weekly by the deceased to such partial dependent bears to his average weekly wages at the time of the injury.

Sec. 38. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she is living at the time of his death, or upon whom the laws of the state impose the obligation of her support at such time.

(b) A husband, who is both physically and financially incapable of self-support, upon his wife with whom he is living at the time of her death.

(c) A child under the age of eighteen years upon the parent with whom he or she is living at the time of the death of such parent.

(d) A child under eighteen years upon the parent with whom he or she may not be living at the time of the death of such parent, but upon whom, at such time, the laws of the state impose the obligation to support such child.

(e) A child over the age of eighteen years who is either physically or mentally incapacitated from earning his or her own support, upon a parent with whom he or she is living at the time of the death of such parent, or upon whom the laws of the state at such time impose the obligation of the support of such child.

As used in this section, the term "child" shall include step-children, legally adopted children, posthumous children, and acknowledged illegitimate children, but shall not include married children; the term "parent" shall include step-parents and parents by adoption.

In all other cases, questions of total dependency shall be determined in accordance with the fact, as the fact may be at the time of the death and the question of partial dependency shall be determined in like manner as of date of the injury. If there is more than one person wholly dependent, the death benefit shall be divided equally among

them; and persons partially dependent, shall receive not (sic) part thereof.

If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among the partial dependents according to the relative extent of their dependency.

The dependency of a widow, widower or child, shall terminate with his or her marriage subsequent to the death of the employee.

The dependency of a child, except a child physically or mentally incapacitated from earning, shall terminate with the attainment of eighteen years of age.

Sec. 39. In all cases of the death of an employee from an injury by an accident arising out of and in the course of his employment under such circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding one hundred dollars.

Sec. 40. In computing compensation under the foregoing sections, the average weekly wages of an employee shall be considered not to be more than twenty-four dollars, nor less than ten dollars; and provided further, That the total compensation payable under this act shall in no case exceed five thousand dollars ($5,000).

Sec. 41. Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this act were not due and payable when made, may subject to the approval of the Industrial Board, be deducted from the amount to be paid as compensation: Provided, That in case of disability such deduction shall be made by shortening the period during which compensation must be paid and not by reducing the

amount of the weekly payments, unless otherwise hereinafter specified.

Sec. 42. When so provided in the compensation agreement or in the award of the Industrial Board, compensation may be paid semi-monthly or monthly instead of weekly.

Sec. 43. After the lapse of twenty-six compensation weeks and the payment in full of twenty-six weeks' compensation, the remainder of the compensation in unusual cases, upon the agreement of the employer and the employee or his dependents, and the approval of the Industrial Board, may be redeemed, in whole or in part, by the cash payment, in a lump sum, of the commutable value of the installments to be redeemed.

The Board may, at any time, in the case of permanently disabling injuries of a minor, require that he be compensated by the cash payment in a lump sum of the commutable value of the unredeemed installments of the compensation to which he is entitled.

In all such cases, the commutable value of the future, unpaid installments of compensation shall be the present value thereof, at the rate of three percent interest, compounded annually.

Sec. 44. Whenever the Industrial Board deems it expedient, any lump sum under the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the Circuit or Superior Court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the Board. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

Sec. 45. The power and jurisdiction of the Industrial Board over each case shall be continuing, and, from time to

time, it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award, ending, lessening, continuing or extending the payments, previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this act.

Upon making any such change, the Board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

The Board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of one year from the termination of the compensation period fixed in the original award, made either by an agreement or upon hearing. The Board may at any time correct any clerical or mistake of fact in any finding or award.

Sec. 46. When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen years of age, do not exceed one hundred dollars, the payment thereof may be made directly to such employee or dependent, except when the Industrial Board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen years of age, exceed one hundred dollars, the payment thereof shall be made to a trustee, appointed by the Circuit or Superior court, or to a duly qualified guardian, or to a parent upon the order of the Industrial Board. The payment of compensation, due to any person eighteen years of age or over, may be made directly to such person.

Sec. 47. If an injured employee or a dependent is mentally incompetent or a minor at the time when any right or privilege accrues to him under this act, his guardian or trustee may, in his behalf, claim and exercise such right or privilege.

Sec. 48. No limitation of time provided in this act shall run against any person who is mentally incompetent or a minor dependent, or a minor, so long as he has no guardian or trustee.

Sec. 49. Whenever any employee for whose injury or death compensation is payable under this act shall at the time of the injury be in the joint service of two or more employers subject to this act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employees: Provided, however, That nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

PART III.

ADMINISTRATION.

Sec. 50. There is hereby created the Industrial Board of Indiana, which shall consist of five members, two of whom shall be attorneys, and not more than three of whom shall be of the same political party, appointed by the Governor, one of whom he shall designate as Chairman.

The chairman of said Board shall be an attorney of recognized qualifications.

Each member of the Board shall hold his office for four years, and until his successor is appointed and qualified,

unless removed by the Governor, except that the three present members of said Board shall continue to serve for and during the terms for which they have been appointed, unless removed as hereinafter provided, and of the two additional members hereby provided for, one shall be appointed for two years and one for four years. Thereafter, upon the expiration of the term of any member, the Governor shall appoint his successor for the full term of four years.

Each member of the Board shall devote his entire time to discharge of the duties of his office and shall not hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of his duties as such member.

Any member of said Board may be removed by the Governor at any time for incompetency, neglect of duty, misconduct in office or other good cause, to be stated in writing in the order of removal.

In case of a vacancy in the membership of said Board, the Governor shall appoint for the unexpired term.

Sec. 51. The annual salary of each member of the Board shall be four thousand dollars.

The Board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and may remove him. The secretary shall have the authority to administer oaths and issue subpoenas.

The Board, subject to approval of the Governor, may employ and fix the compensations of such clerical and other assistants as it may deem necessary. The clerical and other assistants shall be employed with special reference to their qualifications for the discharge of the duties assigned to them, and without regard to their political affiliations, except that not more than sixty percent of such employees

shall be of the same political party, provided that none of the present employees shall be discharged merely to establish such political proportion.

The members of the Board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the Board, but such expenses shall be sworn to by the person who incurred the same and shall be approved by the chairman of the Board before the payment is made.

All salaries and expenses of the Board shall be audited and paid out of the state treasury in the manner prescribed for similar expenses in other departments or branches of the state service.

Sec. 52. The rights, powers and duties conferred by law upon the State Bureau of Inspection of the State of Indiana are hereby continued in full force and are hereby transferred to the Industrial Board hereby created and shall be held and exercised by them under the laws heretofore in force and the said State Bureau of Inspection is hereby abolished. The present Chief Inspector of said State Bureau of Inspection is hereby made a member of said Industrial Board until the expiration of one year from the date of the taking effect of this act and until his successor is appointed and qualified. The deputy inspectors heretofore appointed by the Governor as deputy inspectors in said State Bureau of Inspection, to-wit: Inspector of Buildings, Factories and Workshops, Inspector of Boilers and Inspector of Mines and Mining together with their assistant inspectors, are hereby continued in their respective office, at their present salaries, until the expiration of the terms for which they are respectively appointed and until their successors are appointed and qualified and each of

them respectively shall have and perform all the rights, powers and duties now held and performed by each of them respectively, together with such other rights, powers and duties as may be prescribed by said Industrial Board. Upon the terminations of the said terms of office for which said deputy inspectors have been appointed, said Industrial Board, with the concurrence of the Governor, shall appoint their successors to serve during the pleasure of said Industrial Board.

Sec. 53. All the rights, powers and duties of the Labor Commission of the State of Indiana, heretofore created and subsequently transferred to and vested in the State Bureau of Inspection, are hereby abolished.

Sec. 54. The Board shall be provided with adequate offices in the Capitol or some other suitable building in the city of Indianapolis in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery and other supplies.

The Board or any member thereof may hold sessions at any place within the state as may be deemed necessary.

Sec. 55. The Board may make rules not inconsistent with this act for carrying out the provisions of this act. Processes and procedure under this act shall be as summary and simple as reasonably may be. The Board or any member thereof shall have the power for the purpose of this act to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

The county sheriff shall serve all subpoenas of the Board and shall receive the same fees as now provided by law for

like service in civil actions; each witness who appears in obedience to such subpoena of the Board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The Circuit or Superior Court shall, on application of the Board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records.

Sec. 56. The Board shall prepare and cause to be printed, and upon request furnish free of charge to any employer or employee, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this act. The accident reports and reports of attending physicians shall be the private records of the Board, which shall be open to the inspection of the employer, the employee and their legal representatives, but not to the public unless, in the opinion of the Board, the public interest shall so require.

That the Board shall make to the Governor annually, on or before the first day of December, a report of its work during the preceding fiscal year, in such form as it may determine, with the approval of the Governor. In order to prevent the accumulation of unnecessary and useless files of papers, the Board, in its discretion, may destroy all papers which have been on file for more than two years, when there is no claim for compensation pending, or, when compensation has been awarded either by agreement or upon hearing, and more than one year has elapsed since the termination of the compensation period as fixed by such Board.

Sec. 57. If after seven days from the date of the injury or at any time in case of death, the employer and the in-

jured employee or his dependents reach an agreement in regard to compensation under this act, a memorandum of the agreement in the form prescribed by the Industrial Board shall be filed with the Board; otherwise such agreement shall be voidable by the employee, or his dependents.

If approved by the Board, thereupon the memorandum shall for all purposes be enforcible by court decree as hereinafter specified. Such agreement shall be approved by said Board only when the terms conform to the provisions of this act.

Sec. 58. If the employer and the injured employee or his dependents fail to reach an agreement in regard to the compensation payable under this act, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the Industrial Board, and then disagree as to the continuance of payments under such agreement, because of a change in conditions since the making of such agreement, either party may make an application, to the Industrial Board, for the determination of the matters in dispute.

Upon the filing of such application, the Board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties in the manner prescribed by the Board of the time and place of hearing. The hearing of all claims for compensation, on account of injuries occurring within the state, shall be held in the county in which the injury occurred, except when the parties consent to a hearing elsewhere.

Sec. 59. The Board by any or all of its members shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceed-

ings, and a copy thereof shall immediately be sent to each of the parties in dispute.

Sec. 60. If an application for review is made to the Board within seven days from the date of an award, made by less than all the members, the full Board, if the first hearing was not held before the full Board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses as soon as practicable and shall make an award and file the same with a finding of the facts on which it is based and the rulings of law by the full Board, if any, and send a copy thereof to each of the parties in dispute, in like manner as specified in the foregoing section.

Sec. 61. An award of the Board, by less than all of the members, as provided in Section 59, if not reviewed as provided in Section 60, shall be final and conclusive.

An award by the full board shall be conclusive and binding as to all questions of the fact, but either party to the dispute may within thirty days from the date of such award appeal to the Appellate Court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

The Board, of its own motion, may certify questions of law to said Appellate Court for its decision and determination.

An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts.

All such appeals and certified questions of law shall be submitted upon the date filed in the appellate court, shall be advanced upon the docket of said court, and shall be

determined at the earliest practicable date, without any extensions of time for filing briefs.

An award of the full Board affirmed on appeal, shall be increased thereby five percent.

Sec. 62. Any party in interest may file in the Circuit or Superior Court of the county in which the injury occurred, a certified copy of a memorandum of agreement approved by the Board or of an order or decision of the Board, or of an award of the Board unappealed from, or of an award of the Board rendered upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said Circuit or Superior Court unappealed from or affirmed on appeal or modified in obedience to the mandate of the Appellate Court, shall be modified to conform to any decision of the Industrial Board, ending, diminishing or increasing any weekly payment under the provisions of section 45 of this act, upon the presentation to it of a certified copy of such decision.

Sec. 63. In all proceedings before the Industrial Board or in a court under this act, the costs shall be awarded and taxed as provided by law in ordinary civil action in the Circuit Court.

Sec. 64. The Board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reason-

able fee to be fixed by the Board not exceeding ten dollars for each examination and report, but the Board may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid by the State.

Sec. 65. The fees of attorneys and physicians and charges of nurses and hospitals for services under this act shall be subject to the approval of the Industrial Board. When any claimant for compensation is represented by an attorney in the prosecution of his claim, the Industrial Board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fee. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the attorney out of the award, the fee so fixed and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award. The Industrial Board may withhold the approval of the fees of the attending physician in any case until he shall file report with the Industrial Board on the form prescribed by such Board.

Sec. 66. All questions arising under this act, if not settled by agreement of the parties interested therein with the approval of the Board, shall be determined by the Board except as otherwise herein provided for.

Sec. 67. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in Section 22, of an injury to an employee causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the Industrial Board on blanks to be procured from the Board for the purpose.

Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the Board on blanks to be procured from the Board for the purpose.

The said report shall contain the name, nature and location of the business of the employer, and name, age, sex, wages and occupation of the injured employee and shall state the date and hour of the accident causing the injury, the nature and cause of the injury and such other information as may be required by the Board.

Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the Board.

PART IV.

INSURANCE.

Sec. 68. Every employer of the state, except agricultural employers and the employers of domestic servants, shall register annually on or before the first day of September, with the Industrial Board and procure the certificate of said Board, showing such registration. Each such employer shall file an application with the Industrial Board, annually on or before the first day of September, for registration and a certificate thereof, upon a form therefor, prescribed by the Industrial Board and furnished by it, in which the employer shall state the following facts to-wit: The correct name of the employer, and, if a partnership,

both the firm name and the names of the partners. The postoffice address of the employer, and when a partnership, the postoffice address of each partner; the nature and location of the business in which the employer is engaged; the number of employees; the sex of employees and the number of each sex, when both sexes are employed. Any employer failing to so file such application with the Industrial Board and procure a certificate of registration shall be fined not less than ten nor more than one hundred dollars.

The Industrial Board shall keep registry by cards of the employers of the state, by counties, arranged in alphabetical order as to the names of the counties and the names of the employers.

Every employer under this act shall either insure or keep insured his liability hereunder in some corporation, association or organization authorized to transact the business of workmen's compensation insurance in this state, or shall furnish to the Industrial Board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the Board may in its discretion require the deposit of an acceptable security indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Sec. 69. Every employer who does not exempt himself from the compensation proceedings of this act and who does not procure from the Industrial Board a certificate of his financial ability to pay compensation direct, without insurance, shall within ten days after this act takes effect file with the Industrial Board in the form prescribed by it, and thereafter within ten days, after the termination of his insurance by expiration or cancellation evidence of his com-

pliance with the insurance provisions of Section 68, hereof, and all others relating to the insurance under this act.

That any employer hereafter coming under the compensation provisions hereof, shall in a like manner file like evidence of such compliance on his part.

If such employer refuses or negiects to comply with these provisions he shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this act or at law in the same manner as provided for in Section 10.

Sec. 70. Whenever an employer has complied with the provisions of Section 68 relating to self insurance, the Industrial Board shall issue to such employer a certificate which shall remain in force for a period fixed by the Board but the board may upon at least ten days' notice and a hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the Board may grant a new certificate to the employer upon his petition, and satisfactory proof of his financial ability.

Sec. 71. For the purpose of complying with the provisions of Section 68, groups of employers, to form Mutual Insurance Associations or Reciprocal Insurance Associations subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board, are hereby authorized. Membership in such Mutual Insurance Associations or Reciprocal Insurance Associations so approved together

with evidence of the payment of premiums due, shall be evidence of compliance with Section 68.

Sec. 72. Subject to the approval of the Industrial Board any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under this act at least commensurate with such contributions.

Such substitute system may be terminated by the Industrial Board on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act; and in this case the Board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the Appellate Court.

Sec. 73. No insurer shall enter into or issue any policy of insurance under this act until its policy form shall have been submitted to and approved by the Industrial Board. The Industrial Board shall not approve the policy form of any insurance company until such company shall file with it the certificate of the auditor of state showing that such company is authorized to transact the business of workmen's compensation insurance in the state. That the filing of a policy form by any insurance company or reciprocal insurance association with the Industrial Board for ap-

proval shall constitute on the part of such company or association a conclusive and unqualified acceptance of each and all of the provisions of this act, and an agreement by it to be bound thereby.

All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this act, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured.

Any provision in any such policy attempting to limit or modify the liability of the company or association issuing the same shall be wholly void.

Every policy of any such company or association must contain the following provisions:

(a) The insurer hereby assures in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under the provisions of "The Indiana Workman's Compensation Act."

(b) That this policy is made subject to the provisions of "The Indiana Workman's Compensation Act," and the provisions of said act relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for said employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are and and shall be a part of this policy contract as fully and completely as if written herein.

(c) That, as between this insurer and the employee, notice to or knowledge of the occurrence of the injury on the part of the insured (the employer) shall be notice or knowledge thereof, as the case may be, on the part of the insurer; that the jurisdiction of the insured (the employer) for the purpose of "The Indiana Workmen's Compensation Act," shall be the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to awards, judgments and decrees rendered against the insured (the employer) under said act.

(d) That this insurer will promptly pay to the person entitled to the same, all benefits conferred by "The Indiana Workman's Compensation Act," including physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses and all installments of compensation or death benefits that may be awarded or agreed upon under said act; that the obligation of this insurer shall not be affected by any default of the insured (the employer) after the injury or by any default in the giving of any notice required by this policy, or otherwise; that this policy is and shall be construed to be a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital supplies, charges for burial, compensation or death benefits, and shall be enforceable in the name of such person.

(e) That any termination of this policy either by cancellation or expiration, shall not be effective as to employees of the insured covered hereby until ten days after written notice of such termination has been received by the Industrial Board of Indiana, at its office in Indianapolis, Indiana.

That all claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees or burial

expenses may be made directly against either the employer or the insurer or both, and the award of the Industrial Board may be made against either the employer or the insurer or both.

That if any insurer shall fail or refuse to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail or refuse to comply with any provision of this act, the Industrial Board shall revoke the approval of its policy form, and shall not accept any further proofs of insurance from it until it shall have paid said award or judgment or complied with the violated provision of the act, and shall have re-submitted its policy form and received the approval thereof by the Industrial Board.

Sec. 74. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same, all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

Sec. 75. Every policy for the insurance of the compensation herein provided or against liability thereof, shall be deemed to be made subject to the provisions of this act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Industrial Board.

PART V.

DEFINITIONS AND MISCELLANEOUS PROVISIONS.

Sec. 76. In this act unless the context otherwise requires:

(a) "Employer" shall include the State and any political division, any municipal corporation within the state any individual, firm, association or corporation or the receiver or trustee of the same or the legal representatives of a deceased person using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) "Employee" shall include every person, including a minor, lawfully in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) "Average weekly wages" shall mean the earning of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost seven or more calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the

earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or of the casual nature or terms of the employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Wherever allowance of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

(d) "Injury" and "Personal Injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except as it shall result from the injury.

Sec. 77. If any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Sec. 78. All acts and parts of acts inconsistent with any provisions of this act are hereby repealed to the extent of such inconsistency.

Sec. 79. This act shall take effect on the first day of September, 1915, except that Part III with the exception of Sec. 67, shal take effect upon the passage of this act.

APPROPRIATION.

Sec. 80. For the purpose of paying the salaries and expenses of the members of the Industrial Board and its employees, the sum of $70,000 or so much thereof as may be necessary is hereby appropriated.

Sec. 81. The provisions of this act shall not affect pending litigation.

EMERGENCY.

Sec. 82. Whereas an emergency exists for the immediate taking effect of Part III of this act with the exception of Section 67, said Part III with said exception shall be in full force from and after the passage of this act.

ADDITIONAL LEGISLATION.

In addition to the above, the legislature of 1917 also passed the following additional acts relating to workmen's compensation insurance:

Section 1. Be it enacted by the general assembly of the State of Indiana, That every company, corporation, individual, copartnership which is authorized to transact business in this state and engages in the business of liability insurance or workmen's compensation insurance shall, in addition to all other reserves required by law, establish and maintain a reserve for outstanding losses under insurance, against loss or damage from accident to or injuries suffered by an employee or other person for which the insured is liable, to be computed as follows:

(1) For all liability suits being defended under policies written more than

(a) Ten (10) years prior to the date as of which the statement is made, one thousand five hundred dollars ($1,500) for each suit.

(b) Five (5) and less than ten (10) years prior to the date as of which the statement is made, one thousand dollars ($1,000) for each suit.

(c) Three (3) and less than five (5) years prior to the date as of which the statement is made, eight hundred and fifty dollars ($850) for each suit.

(2) For all liability policies written during the three (3) years immediately preceding the date as of which the statement is made, such reserve shall be sixty per centum (60%) of the earned liability premiums of each of such three (3) years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three (3) years, be not less than seven hundred and fifty dollars ($750) for each outstanding liability suit on said year's policies.

(3) For all compensation claims under policies written more than three (3) years prior to the date as of which the statement is made, the present values at four per centum (4%) interest of the determined and the estimated future payments.

(4) For all compensation claims under policies written in the three (3) years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five per centum (65%) of the earned compensation premiums of each of such three (3) years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event, in the case of the first year of any such three (3)

year period such reserves shall be not less than the present value at four per centum (4%) interest of the determined and the estimated unpaid compensation claims under policies written during such year: Provided, however, that in computing the reserve for the statement for December thirty-first, nineteen hundred and seventeen (1917), and December thirty-first, nineteen hundred and eighteen (1918), the ratios sixty per centum (60%) and sixty-two and one-half per centum (62½%) respectively shall be used instead of sixty-five per centum (65%) as herebefore provided.

Sec. 2. The term "earned premiums" as used herein shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less return premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies cancelled, and less unearned premiums on policies in force. But any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the auditor of state.

The term "compensation" as used in this act shall relate to all insurance effected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer. The term "liability" shall relate to all insurance except compensation insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable. The terms "loss payments" and "loss expense payments" as used herein shall include all payments to claimants, in-

cluding payments for medical and surgical attendance, legal expenses, salaries and expenses, salaries and expenses of investigators, adjusters and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

Sec. 3. All unallocated liability loss expense payments made in a given calendar year subsequent to the first four (4) years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five per centum (35%) shall be charged to the policies written in that year, forty per centum (40%) to the policies written in the preceding year, ten per centum (10%) to the policies written in the second year preceding, ten per centum (10%) to the policies written in the third year preceding and five per centum (5%) to the policies written in the fourth year preceding, and such payments made in each of the first four (4) calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred per centum (100%) shall be charged to the policies written in that year, in the second year fifty per centum (50%) shall be charged to the policies written in that year and fifty per centum (50%) of the policies written in the preceding year, in the third calendar year forty per centum (40%) shall be charged to the policies written in that year, forty per centum (40%) to the policies written in the preceding year, and twenty per centum (20%) to the policies written in the second year preceding, and in the fourth calendar year thirty-five per centum (35%) shall be charged to the policies written in that year, forty per centum (40%) to the policies written in the preceding year, fifteen

per centum (15%) to the policies written in the second year preceding, and ten per centum (10%) to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement. All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three (3) years in which an insurer has been issuing compensation policies shall be distributed as follows: Forty per centum (40%) shall be charged to the policies written in that year, forty-five per centum (45%) to the policies written in the preceding year, ten per centum (10%) to the policies written in the second year preceding and five per centum (5%) to the policies written in the third year preceding, and such payments made in each of the first three (3) calendar years in which an insurer issued compensation policies shall be distributed as follows: In the first calendar year one hundred per centum (100%) shall be charged to the policies written in that year, in the second calendar year fifty per centum (50%) shall be charged to the policies written in that year and fifty per centum (50%) to the policies written in the preceding year, in the third calendar year, forty-five per centum (45%) shall be charged to the policies written in that year, forty-five per centum (45%) to the policies written in the preceding year and ten per centum (10%) to the policies written in the second year preceding, and a schedule showing such distribution shall be included in the annual statement. Whenever, in the judgment of the auditor of state the liability or compensation loss reserves of any insurer under his supervision, calculated in accordance with the foregoing provisions, are inadequate, he may, in his discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.

Sec. 4. Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the auditor of state may prescribe.

APPENDIX.

B.

DIGEST OF CASES INVOLVING THE CONSTITUTIONALITY OF WORKMEN'S COMPENSATION ACTS OF VARIOUS STATES WITH REFERENCE ESPECIALLY TO CLASSIFICATIONS MADE THEREIN.

Iowa

Hawkins v. Bleakley, 37 Sup. Ct. Rep. 255, 243 U. S. 210, reported below in 220 Fed. 378.

Validity of same law sustained by Supreme Court of Iowa in *Hunter v. Colfax Consolidated Coal Co.*, 154 Iowa Rep. 1037, 157 N. W. Rep. 145.

The Iowa law is found, Section 2477, in Iowa Code Supplement of 1913.

It is a permissive law, and the term "employer" applies to any person, firm, association or corporation, including state, counties, municipal corporations, cities under special charter, school districts, and legal representatives of a deceased employer.

It does not apply to (a) household or domestic servants, farm or other laborers engaged in agricultural pursuits, nor to persons whose employment is of a casual nature. (Section 2477 m.)

The act is compulsory as to the State, counties, municipal corporations, school districts, cities under special charter or commission. (Section 2477 m.)

The act is held not to violate the Fourteenth Amendment. No constitutional objection was raised in the U. S. Supreme Court as to the "main purpose" of the Act.

Hunter v. Colfax Coal Co., 157 Iowa 145, 154 N. W. 1037, L. R. A. 1917 D. 15 (Exhaustive note).

The law was attacked on the following, among other grounds:

(1) That there was an improper classification.

(2) That it was in violation of the due process, etc., clause of the Fourteenth Amendment.

(3) That it improperly delegated judicial power.

The law was held to be valid.

Illinois

Deibekis v. The Link Belt Co., 261 Ill. 454, 104 N. E. 211;

Dietz v. Big Muddy Coal & Iron Co., 263 Ill. 480, 105 N. E. 289;

Victor Chemical Works v. Industrial Board, 274 Ill. 11, 113 N. E. 173.

In the case first above cited the validity of the Illinois Workmen's Compensation Law of Acts 1911, page 315, was attacked.

This law (which has been repealed by laws 1913, page 335) was a permissive act applying to employers engaged in the following occupations:

(a) Building, maintaining or demolishing structures

(b) Construction of electrical work.

(c) Carriage by land or water and loading and unloading in connection therewith, exclusive of those employers coming under the Federal Employers' Liability Act.

(d) Operating store houses.

(e) Mining, surface mining, or quarry.

(f) The manufacture, handling or use of explosive materials in dangerous quantities.

(g) Any enterprise in which molten metal or injurious gases or vapors or inflammable fluids were manufactured or used, generated, stored or conveyed in dangerous quantities.

(h) And any enterprise required by statute to guard machinery or appliances which are by the Act declared to be especially dangerous.

Apparently the classification above made was not seriously attacked, but as the Act limited the definition of employee to include only such as might be exposed to the necessary hazards of carrying on the businesses within the purview of the Act, it was claimed that this classification was unjust. The court held that excluding anyone who might be occupying a mere clerical position and those whose work was not subject to any of the general hazards, was a proper and reasonable classification. It also said that the classification of the businesses referred to seems to be a perfectly valid and reasonable one.

The conclusions reached in the cases above cited are reaffirmed by the Supreme Court of Illinois in the case of *Keeran v. Peoria, etc., Co.*, 277 Ill. 413, 115 N. E. 636. In *Friebel v. Chicago City R. Co.*, 280 Ill. 76, 117 N. E. 467, the attack was made upon the law because the injured employee was not permitted to maintain an action at law against a third person causing his injury, such third person being also subject to the Act. It is to be especially noted that in answering constitutional objections the Supreme Court of Illinois lays great stress upon the fact that the Act is a permissive one.

Victor Chemical Works v. Industrial Board, 274 Ill. 11 Held that properly construed the Act of 1913 was elective and not mandatory.

The Act includes within its provisions substantially the same extra hazardous employments as the Act of 1911, but permits any other employer to elect to come under its provisions.

Pennsylvania

Anderson v. Carnegie Steel Co., 99 Atl. 215.

The Workmen's Compensation Act of Pennsylvania (P. L. 736) was passed in 1915.

Purdon's Digest (13th Ed.) Vol. 7, p. 7777, *et seq.*

The act includes all natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the commnwealth, and all governmental agencies created by it.

Section 128 exempts persons engaged in domestic service or agriculture.

The Act is elective.

No question of improper classification was raised or decided in the above case. The law was held to be valid.

Rhode Island

Sayles v. Foley, 96 Atl. 340. *Elective Act.*

The law was sustained as against an attack by the employee. The Court held:

1. That the classification of the act which excluded
   (a) Casual employees.
   (b) Those paid more than $1,800 a year.
   (c) Those engaged in domestic service or agriculture,

and which applied only to employers of five or more workmen was valid.

New York

Ives v. So. Buffalo Ry. Co., 200 N. Y. 271, 94 N. E. 431, Ann. Cases 1912 B. 156;

Jensen v. Southern Pacific Co., 215 N. Y. 514, 109 N. E. 600. (Case subsequently reversed in U. S. Supreme Ct. because law could not validly apply to maritime injury.)

The first compulsory New York statute was held invalid in *Ives v. So. Buffalo R. Co., supra.*

The New York Constitution was then amended, another statute passed, and it was held valid.

The second New York Act (L. 1914, c. 41) was compulsory and its validity was sustained. It applied to 42 different groups of hazardous employments, but excluded the State and all municipal and political subdivisions. Most of these groups included several different kinds of business, and it is safe to say that the law covered all hazardous employments, among others, paving and subway construction, milling, manufacturing of chemicals and explosives, of metals, textile manufacture, laundries, lumbering construction, ship building, railways, machine shops, pulp and paper mills, glass, iron and steel mills, mining, etc.

Kansas

Shade v. Ash Grove Lime and Portland Cement Co., 92 Kans. 146, 93 Kans. 257, 139 Pac. 1193, 144 Pac. 249.

This act is elective.

Held that the classifications of the act with reference to business and number of employees were valid. Kansas Laws 1913, Ch. 216, Sec. 2 (Genl. St. Kans. 1915, 5900 reads:

> "This act shall apply only to employment in the course of the employer's trade or business, on, in, or about a railway, factory, mine or quarry, electric,

building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen."

Ohio

State v. Creamer, 85 Ohio 349, 97 N. E. 602;

Fassig v. The State, 116 N. E. 104;

Jeffrey Mfg. Co. v. Blagg, 108 N. E. 465, 235 U. S. 571.

The State of Ohio first enacted a permissive Workmen's Compensation Law applicable to every employer in Ohio having five or more employees. Proper provisions were included authorizing both employer and employee to reject the Act. The law was attacked on the grounds that there was an improper classification, that there was a delegation of judicial power to the board of awards, a denial of a jury trial, that it impaired the obligation of contracts, etc. As will be noted from the above statement, the law applied equally to all employers without respect to the nature of their business provided they had five or more employees and such classification was held to be a reasonable and proper one. Subsequently, the Constitution of Ohio was amended so as to remove any doubt as to the right of the General Assembly to pass a compulsory statute. The wording of this constitutional amendment was very broad. It provided among other things "For the purpose of providing

compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workman's employment, laws may be passed establishing a State fund to be created by compulsory contribution thereto by employers, etc., etc."

The validity of the Ohio statute has been so affirmed in the case of *Jeffery Manufacturing Company v. Blagg*, 108 N. E. 465, and in the same case in the Supreme Court of the United States reported in 235 U. S. 571. The main attack on the law in the Supreme Court was on the ground of improper classification in that the Ohio law applied only to establishments employing five or more men.

Maryland

Solvuca v. Ryan, etc., Co., 101 Atlan. 710:

The Maryland Act specifies a great number of employments which are determined to be extra hazardous, and the Act is made to apply to all of them and to all other extra-hazardous employments. As to all these extra hazardous employments the law is compulsory. The opinion quotes at length from the case of *New York Central R. R. Co. v. White*, 243 U. S. 188. The only discussion in the case upon the proposition of the alleged invalidity of the Act as being violative of the Fourteenth Amendment is the excerpt from the *New York Central R. R. Co. v. White, supra.*

W. Virginia

Watts v. Ohio Valley Electric Ry. Co., 88 S. E. 659.

The Workmen's Compensation Law of West Virginia is permissive, not compulsory. The West Virginia Act includes the following specified hazardous employments:

1. Coal mines.
2. Paint manufactories, oil refineries, oil and gas wells.

3. Iron and steel mills, blast furnaces, smelters, etc.
4. Sheet and tin plate mills.
5. Foundries, machine shops, car building and repairing, etc.
6. Stamped metal works, can factories.
7. Logging, saw mills, etc.
8. Planing mills, wood pulp, furniture factories, etc.
9. Glass houses, potteries, brick, etc.
10. Printing plants, electrotyping, etc.
11. Woolen mills, cotton mills, knitting mills.
12. Breweries, etc.
13. Slaughter and packing houses, etc.
14. Steam laundries, stamping and embossing works, etc.
15. Steam and other railroads.
16. Street and interurban railroads.
17. Telegraph and telephone companies, water works, gas works, grain elevators, etc.
18. Quarries, stone crushers, gravel pits, mines, cement plants.
19. Match factories, powder mills, etc.
20. Construction work.

All employers choosing to operate under the law are permitted to do so.

The only discussion in this case as to the validity of the Act turns upon an attack upon the law on the ground that it took from the defendant its common law defenses. The Court adheres to its ruling in *De Francesco v. Piney, etc., Co.*, 86 S. E. 777. In that case the discussion is meager. There was an assignment of error challenging the validity of the law, but it was not insisted upon. The Court simply stated that the law was, in its opinion, valid.

New Jersey

Sexton v. Newark District Telephone Co., 84 N. J. Law, 85, 86 Atlan. 451.

The New Jersey Act (Public Laws 1911, pp. 134 and 763) applies to all employers whether natural persons, partnerships or corporations. (Laws 1911, p. 144.)

It is an elective Act. The statute was attacked upon the ground that it violated the Fourteenth Amendment and impaired the obligation of contracts. However, no question was raised as to any improper classification.

The law was held to be valid.

Washington

State ex rel. v. Clausen, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 305;

State v. Mountain Timber Co., 135 Pac. 645;

Mountain Timber Co. v. State, 243 U. S. 219, 37 Sup. Ct. Rep. 260.

The Washington Act (Laws 1911, c. 74) is compulsory. Section 2 read as follows:

> "Section 2. Enumeration of Extra Hazardous Works.
>
> There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently dangerous hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term 'extra hazardous' wherever used in this act, towit:
>
> Factories, mills and workshops, where machinery is used; foundries, blast furnaces, mines, wells, gas

works, water works, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries, engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads.

If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established shall be, until fixed by the legislation, determined by the department hereinafter created, upon the basis of the relation which this risk involved bears to the risks classified in Section 4."

In *State v. Clausen, supra*, this act was attacked as violative of—

(a) The due process and equal protection clauses of the Fourteenth Amendment.

(b) A provision of the State Constitution forbidding the passage of any law granting to any citizen, class of citizens or corporations, other than municipal, privileges or immunities which upon the same terms shall not belong equally to all citizens or corporations.

(c) A provision of the State Constitution that the right of trial by jury shall remain inviolate.

The classification of extra hazardous employments was not attacked, but the only objection to the act in this respect was that all employees, whether engaged in a hazardous work or not, were included (which question the court did not determine), and that in the creation of a fund for the payment of compensation, the contributions extracted from the numerous industries were diverted to the relief

of a particular class of injured workmen and not the relief of injured workmen generally.

In *Stoll v. Pacific Coast Steamship Co.*, 205 Fed. 169, the United States District Court follows the Washington State courts in sustaining the validity of the Workmen's Compensation Law of that State. An elaborate citation of authorities will be found in this case. The same result was reached in the Circuit Court of Appeals for the Ninth Circuit, in the case of *Raymond v. Chicago, etc., R. R. Co.*, 233 Fed. 239.

Arizona

Inspiration Copper Co. v. Mendez, 166 Pac. 278.

The Arizona law (Revised Statutes of Arizona 1913, Section 3163, *et seq.*) is compulsory.

All employers in especially dangerous employments are brought within the Act.

The legislature fixed the following employments as especially dangerous:

1. Steam, electric and street railroads.
2. All work in making or using gun powder, dynamite, explosives, etc.
3. Iron and steel construction work.
4. Operation of elevators, hoisting apparatus, etc.
5. Scaffolding work.
6. Construction and operation of electrical work.
7. Telegraph and telephone work.
8. Mines and quarries.
9. Construction and repair of tunnels, etc.
10. All work in mills, shops, yards, plants, etc., where steam, electricity, or any other mechanical power is used to operate machinery.

The act was held valid. There was no particular discussion of the classification feature of the statute.

It is to be noted that Section 7 of Article 18 of the State Constitution required the enactment of an Employers' Liability Law in all hazardous occupations, in mining, smelting, manufacturing, railroad or street railroad transportation, making the employer liable without respect to his fault.

Arizona Copper Co. v. Hammer, 39 Sup. Ct. R. 553 (Decided June 9, 1919.)

California

Western Indemnity Co. v. Pillsbury, 151 Pac. 398;
Western Metal Supply Co. v. Pillsbury, 156 Pac. 491.

The case first above cited passes upon the main features of the Act of 1913 (Statutes 1913, p. 279), which is a compulsory law.

The Act included all employments except

1. Casual laborers.

2. Farm, dairy, agricultural, vinicultural, horticultural, stock, poultry and domestic laborers.

A constitutional amendment in California authorized the adoption of a Workmen's Compensation Law.

On the subject of those included in the act, the Court said:

> "We have not overlooked the circumstances that the Boynton Act, unlike some of the other statutes to which we have referred, does not limit the newly created scheme of compensation to specially enumerated industries, selected as and declared to be extra hazardous in character. We do not conceive that this difference has any real bearing upon the constitutional questions heretofore discussed. The legislative power to impose the liability upon an em-

ployer who is without fault does not, in the view of the courts which have dealt with this subject, rest upon the consideration that the particular employer is conducting an industry in which injury is more likely to result than in some other; if the burden may be imposed upon all who are conducting industries in which, in the judgment of the legislature, the public welfare requires this measure of protection."

The Act was attacked as class legislation in respect to the classification excepting casuals, farm laborers, etc., but was sustained.

Oklahoma

Adams v. Iten Biscuit Co., 162 Pac. 938.

The Oklahoma Act is compulsory as to certain specified industries classed as hazardous employments (Acts 1915, p. 472) to-wit:

"Factories, cotton gins, mills and workshops where machinery is used; printing, electrotyping, photograving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, elevators dredges, smelters, power works; laundries operated by power; quarries; engineering works, logging, lumbering, street and interurban railroads not engaged in interstate commerce, buildings being constructed, repaired or demolished, farm building and farm improvements excepted, telegraph, telephone, electric light or power plants or lines, steam heating or power plants, and railroads not engaged in interstate commerce. If there be or arise any hazardous occupation or work other than those hereinabove enumerated, it shall come under this act."

No question as to class legislation was raised, but the right to abolish a trial by jury under a compulsory workmen's compensation act is discussed at length and sustained.

Michigan

Mackin v. Detroit-Timkins Axle Co., 155 N. W. 49;
Grand Rapids Lumber Co. v. Blair, 157 N. W. 29;
Wood v. City of Detroit, 155 N. W. 592.

The Michigan Act is elective.

The act exempted household servants, farm laborers and casual employees, and this was attacked as an improper classification, but the law was sustained.

Massachusetts.

Ex parte Opinion of Supreme Court Justice, 209 Mass. 607, 96 N. E. 308;
Young v. Duncan, 218 Mass. 346, 106 N. E. 1.

The act is elective and covers all employers except (a) domestic servants, (b) farm laborers, (c) masters and seamen on vessels engaged in interstate and foreign commerce, (d) casuals and (e) probably those subject to the Federal Employers' Liability Act.

The Court said:

> "The section is not open to objection as class legislation, or as denying equal protection of the laws. It applies to all employees alike. In this respect it is no more vulnerable than the employers' liability act, which establishes remedies for the benefit of employees, the weekly payment law or many other acts of like nature. (Citing cases.) The act is constitutional and is not open to criticism in the respects urged by the plaintiff."

Montana

Lewis and Clark County v. Industrial Accident Board of Montana, 155 Pac. 268;

Cunningham v. Northwestern Improvement Co., 44 Montana 108, 119 Pac. 554.

In the latter case, it was contended that chapter 96, Laws 1915, was unconstitutional on the ground that it was class legislation, but this contention was denied. The act was elective and included the hazardous employments listed (they fill 1½ pages of print) and include railroads, mines, interurbans, logging, iron and steel manufacture, packing houses, construction work, etc., etc.

In re Cunningham v. Northwestern Improvement Co., supra, a fund was created to pay compensation to *miners only*. It was compulsory. The act was held invalid because even though the employee accepted compensation, he could still have a common law action.

Two points raised in the case and decided in favor of the validity of the law were (1) that it was class legislation and (2) that a trial by jury was denied in violation of the State constitution.

This case goes further than any case which we have examined, with the exception of the case of *American Coal Co. v. Allegany Co.*, 128 Md. 564, 98 Atl. 143. Both of these cases, we submit, are distinguishable from the case at bar. They are more fully discussed elsewhere in this brief.

Wisconsin

Borgniz v. Falk Company, 147 Wis. 327; 133 N. W. 209, 224.

This was an elective act and all employees except certain railroad employees and casuals were within its provisions.

It was admitted that the law might be lawfully enacted as to hazardous employments, but objection was made to the inclusion of non-hazardous occupations as an improper classification. The law was sustained.

Minnesota.

Matheson v. The Minnesota, etc., Ry. Co., 126 Minn. 286; 148 N. W. 71.

This law is elective and does not apply to casual laborers, domestic servants, farm laborers or those employees of railroad, subject to the federal law. This classification was held to be valid.

Kentucky

State Journal Co. v. Workmen's Compensation Board, 170 S. W. 1166; L. R. A. 1916 A. 389;
Greene v. Caldwell, 186 S. W. 648.

In 1914 the Kentucky General Assembly passed a compensation law, which, under a peculiar provision of the Kentucky Constitution providing that no limitation as to the amount of damages recoverable for death should ever be fixed by law, was held invalid. In 1916 a new law was passed which did not apply to agricultural laborers, domestic servants, and carriers, for which a fixed rule of liability had been set by Congress, and applied only to employers who had five or more employees regularly in their service. This law was attacked on the ground of improper classification and sustained.

Texas

Middleton v. Texas Power & Light Co. 185 S. W. 556; reversing the same case in 178 S. W. 956.

The Court of Civil Appeals had held the Texas Workmen's Compensation Act invalid, and this decision was reversed by the Supreme Court of Texas.

The Act does not apply to employers operating railroads, to domestic servants, farm laborers, to persons having five or less employees, or to cotton gins. The particular vice of this statute was that it was elective as to employers but when the employer had once elected to come within the law his employees were bound to accept its provisions. The Supreme Court of Texas held that this was not an improper classification and did not impair the right to trial by jury.

Affirmed in 249 U. S. 152; 39 Sup. Ct. 227.

Oregon

Evanhoff v. State Industrial Accident Commission, 154 Pac. 107.

The Oregon Elective Compensation Law was sustained in this decision. It applies to those employers engaged in hazardous businesses, but only to the workmen subject to such hazards. The hazardous employments included are factories, mills, workshops, mines, laundries, operated by power, smelters, quarries, street and interurban railroads not engaged in interstate commerce and many others.